

4/10/93

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GOULD INC.,

Plaintiff,

v.

A&M BATTERY & TIRE SERVICE  
414 Spring Street  
Elizabeth, NJ 07201

and

A. ALLAN INDUSTRIES, INC.  
t/a ALLAN INDUSTRIES  
P.O. Box 999  
Interstate 81 & Blackmun Street  
Wilkes-Barre, PA 18703

and

A. SHAPIRO & SONS  
341 Ashland Street  
P.O. Box 711  
North Adams, MA 01247

and

ABE COOPER SYRACUSE  
320 W. Hiawatha Boulevard  
P.O. Box 67  
Syracuse, NY 13208

and

ABE COOPER WATERTOWN  
CORPORATION  
Corporate Cherry Island  
Alexandria Bay, NY 13607

and

ABE E. NATHAN SONS  
5-25 St. Joseph Street  
P.O. Box 266  
Utica, NY 13503

and

CIVIL ACTION NO. 91-1714

HONORABLE RICHARD P. CONABOY

FILED  
SCRANTON

1993

PER. LS  
DEPUTY CLERK

THIRD AMENDED COMPLAINT



ABE N. SOLOMON, INC. ✓  
701 South Main Street  
Wilkes-Barre, PA 18702

and

ACADEMY IRON & METAL CO.  
3500 West 140th Street  
Cleveland, OH 44111

and

ACME METALS & RECYCLING, INC.  
Rear: 64 Napier Street  
Box 3218  
Springfield, MA 01101

and

ACTION METAL COMPANY, INC.  
Gate Hill Road  
Stony Point, NY 10956.

and

ADVANCE AUTO STORES CO., INC.  
d/b/a ADVANCE AUTO or ADVANCE  
AUTO PARTS  
1342 8th Street, S.W.  
Roanoke, VA 24015

and

ALBERT NIVERT & CO.  
Keystone Industrial Park  
Dunmore, PA 18512

and

ALEXANDRIA SCRAP CORPORATION  
c/o Stanley J. Asrael  
302 Ellsworth Drive  
Silver Spring, MD 20910

and

ALL STATE METAL COMPANY  
61-63 Arch Street  
Albany, NY 12202

and



AMERICAN BAG & METAL CO., INC.  
400 Spencer Street  
Syracuse, NY 13204

and

AMERICAN SCRAP CO.  
2201 North 7th Street  
Harrisburg, PA 17110

and

AMERICAN SCRAP & WASTE REMOVAL  
CO.  
P.O. Box 827  
Wilmington, DE 19899

and

AMSOURCE (PENN IRON & METAL)  
1515 East Avenue  
Erie, PA 16503

and

ANNADALE SCRAP COMPANY  
c/o Annaco, Inc.  
943 Hazel Street  
P.O. Box 1145  
Akron, OH 44309

and

ANNE PIRCHESKY, former  
shareholder of ERIC'S IRON &  
STEEL CORP., a dissolved  
corporation f/d/b/a  
RIVERSIDE IRON & STEEL CORP.  
c/o Ronald G. Backer, Esquire  
Rothman Gordon  
Third Floor, Grant Building  
Pittsburgh, PA 15219-2203

and

ARCHBALD WRECKING CO.  
P.O. Box 871  
90 South Main Street  
Archbald, PA 18403

and



ATLANTIC BATTERY CORPORATION  
548 E. 42nd Street  
Paterson, NJ 07513

and

B. MILLENS SONS, INC.  
290 East Strand Street  
C.P.O. Box 1940  
Kingston, NY 12401

and

B. ZEFF COMPANY, INC.  
102 2nd Street  
Braddock, PA 15104

and

BANTIVOGLIO METAL COMPANY  
a/k/a BANTIVOGLIO METALS  
and f/k/a N. BANTIVOGLIO'S  
SONS, INC.  
1500 South 6th Street  
Camden, NJ 08101

and

BARNEY SNYDER, INC.  
Bridge Street Ext.  
P.O. Box 391  
Burgettstown, PA 15021

and

BATAVIA WASTE MATERIAL CO., INC.  
301 Bank Street  
Batavia, NY 14020

and

BATTERY MARKETING CORPORATION  
(BMC)  
P.O. Box 494  
Troy, AL 36801

and

BEN WEITSMAN & SON, INC.  
15 W. Main Street  
P.O. Box 420  
Owego, NY 13827





and

BEN WEITSMAN & SON, INC. ✓  
Brandywine Avenue  
P.O. Box 1326  
Binghamton, NY 13902

and

BLADENSBURG RIVER ROAD METALS  
COMPANY, INC.  
3401 Kenilworth Avenue  
Kenilworth Ave. & Lawrence St.  
Bladensburg, MD 20710

and

BODOW RECYCLING CO. ✓  
1925 Park Street  
Syracuse, NY 13208

and

BRIDGEPORT AUTO PARTS INC.  
f/d/b/a GREAT LAKES BATTERY  
890 National Road  
Bridgeport, Ohio 43912

and

BRISTOL METAL CO., INC. ✓  
58 Broad Common Road  
P.O. Box 596  
Bristol, RI 02809

and

BROCK'S SCRAP & SALVAGE ✓  
220 West King Street  
P.O. Box 720  
Cumberland, MD 21502

and

BROOKFIELD AUTO WRECKERS, INC.  
275 Lamont Street  
Elmsford, NY 10523

and



2515-93-28999

BROOKFIELD METAL CO.  
280 Lamont Street  
Elmsford, NY 10523

and

7 4 30  
BUFF & BUFF, INC.  
133 Edison Avenue  
Schenectady, NY 12305

and

BUFFERED JUNK CO.  
121 Knowlton Street  
Bridgeport, CT 06497

and

CAL'S AUTO SERVICE, INC.  
543 Milltown Road  
North Brunswick, NJ 08902-3347

and

CAMBRIDGE IRON AND METAL  
CO., INC.  
2030 Aliceanna Street  
Baltimore, MD 21231

and

CAPITOL IRON & STEEL CO., INC.  
7th & Kelker Streets  
Harrisburg, PA 17012

and

CAPITOL SCRAPYARD  
c/o Leonard Gorelick  
701 Marian Street  
Scranton, PA 18503

and

CAPITOL SCRAP IRON & METALS,  
INC.  
Railroad Avenue  
Dover, DE 19901

and



CASH AUTOMOTIVE PARTS✓  
1 Holly Place  
Yonkers, NY 10710

and

CHAPIN & FAGIN DIV. OF GCF, INC. 0  
105 Dorothy Street  
Buffalo, NY 14206

and

CHARLES BLUESTONE COMPANY ✓  
Glassport-Elizabeth Road  
Elizabeth, PA 15037

and

CHARLES MEYERS & SON ✓  
P.O. Box 243  
Scranton, PA 18503

and

CHAUNCEY METAL PROCESSORS, INC. :  
107-45 Merrick Boulevard :  
Jamaica, NY 11432 :

and

CHEMUNG SUPPLY CORP. :  
d/b/a OTSEGO IRON & METAL :  
Route 14 :  
Elmira Heights, NY 14903 :

and

CHEVRON CORPORATION f/t/a 7 :  
GULF TIRE AND SUPPLY CO. :  
225 Bush Street :  
P.O. Box 7137 :  
San Francisco, CA 94104-4207 :

and

CHIDNESE SCRAP METAL :  
1825 West Lake Avenue :  
Neptune, NJ 07753 :

and



CLAREMONT METAL & PAPER STOCK ✓  
CORP., INC.  
2 Second Street  
Claremont, NH. 03743

and

CLIMAX MANUFACTURING COMPANY ✓  
a/k/a SPEVAK'S WASTE MATERIAL  
COMPANY  
1 Climax Street  
Castorland, NY 13260

and

CLINTON METAL CO.  
7605 Ogden Drive  
Clinton, MD 20735

and

COATESVILLE SCRAP IRON & METAL ✓  
CO., INC.  
1000 S. First Avenue  
Coatesville, PA 19320

and

COLONIAL METALS ✓  
217 Linden Street  
Columbia, PA 17512

and

COMMERCIAL IRON & METAL CO. ✓  
760 Paterson Avenue  
East Rutherford, NJ 07073

and

CONSERVIT, INC. ✓  
P.O. Box 1517  
Hagerstown, MD 21741

and

CONTINENTAL METALS CORPORATION ✓  
Railroad and Robinson Streets  
P.O. Box 396  
New Eagle, PA 15067

and





COOPER METALLURGICAL CORP. ✓  
3560 Ridge Road  
Cleveland, OH 44102

and

CORNING MATERIALS INC. ✓  
Main Street & Gibson  
P.O. Box 43  
Corning, NY 14830

and

COUSINS METALS ✓  
P.O. Box 400  
460 Brown Ct.  
Oceanside, NY 11572

and

CRESTWOOD METAL CORP. ✓  
1100 Lincoln Avenue  
Holbrook, NY 11741

and

CROPSEY SCRAP IRON AND METAL ✓  
2994-3018 Cropsey Avenue  
Brooklyn, NY 11214

and

D. KATZ & SONS, INC. ✓  
Drecher Avenue & Katz Road  
P.O. Box 510  
Stroudsburg, PA 18360

and

DANIELS & MILLER, INC. ✓  
242 N. Hamilton Avenue  
Greensberg, PA 15601

and

DAVIS BROS. SCRAP CO., INC. ✓  
Mantawny & Glasgow Streets  
Pottstown, PA 19464

and



2515-93-28999

DAVIS INDUSTRIES, INC.  
9920 Richmond Highway  
Lorton, VA 22079

and

DECKER BROTHERS  
201 South Chestnut Street  
Berwick, PA 18603

and

DENAPLES AUTO PARTS  
118 Bush Street  
Dunmore, PA 18512

and

DENVER CONSTRUCTION CORP.✓  
f/d/b/a LUKENS METAL CO.  
c/o Harold Strauss  
13579 Verde Drive  
Palm Beach Gardens, FL 33410

and

DOUGLAS BATTERY MFG., INC.  
500 Battery Drive  
Winston-Salem, NC 27407

and

E. EFFRON & SON  
167 Smith Street  
Poughkeepsie, NY 12601

and

EISNER BROTHERS  
67 Parker Avenue  
Poughkeepsie, NY 12601

and

ELMAN RECYCLING CORP.  
920 Spencer Street  
Syracuse, NY 13204

and



EMPIRE RECYCLING CORP.  
N. Genesee & Lee Streets  
Utica, NY 13502

and

ERIC'S IRON & STEEL CORPORATION  
f/k/a RIVERSIDE IRON & STEEL  
CORP.  
c/o Ronald G. Backer, Esquire  
Rothman Gordon  
Third Floor, Grant Building  
Pittsburgh, PA 15219-2203

and

ERIC PIRCHESKY, former  
shareholder of ERIC'S IRON &  
STEEL CORP., a dissolved  
corporation f/d/b/a  
RIVERSIDE IRON & STEEL CORP.  
c/o Ronald G. Backer, Esquire  
Rothman Gordon  
Third Floor, Grant Building  
Pittsburgh, PA 15219-2203

and

EXETER METALS CO.  
3 Jones Street  
Pittston, PA 18643

and

EXIDE CORP. f/t/a  
BAY STATE BATTERY and  
MID-ATLANTIC DISTRIBUTORS  
645 Penn Street  
Reading, PA 19601-3543

and

EXXON CORP.  
c/o W. J. McAnelly, Jr.  
800 Bell Street  
Houston, TX 77002

and

F. SCHANERMAN  
135-39 Clinton Place  
E. Rutherford, NJ 07073



and

FAIRFIELD SCRAP CO.  
P.O. Box 679 •  
Bridgeport, CT 06601

and

FRANCIS WHITE SCRAP IRON &  
METAL  
Canton-Ogdensburg Rd-Hwy 68  
Ogdensburg, NY 13680

and

FREDERICK JUNK CO.  
313 E. 4th Street  
Frederick, MD 21701

and

FULTON IRON & STEEL CO.  
3800 Burnet Street  
East Syracuse, NY 13057

and

G. CARLOMAGNO SCRAP ✓  
447 Johnston Avenue  
Jersey City, NJ 07304

and

G.M. HONKUS & SONS, INC.  
2030 Seanor Road  
Windber, PA 15963

and

GARBOSE METAL COMPANY  
155 Mill Street  
Gardner, MA 01440

and

GELB & CO., INC.  
1521 Albright Avenue  
Scranton, PA 18509

and





GENERAL BATTERY CORP.  
P.O. Box 1262  
Spring Valley Road  
Reading, PA 19603

and

GENERAL METALS & SMELTING CO.  
47 Topeka Street  
Boston, MA 02118

and

GEORGE MOSS  
108 Wright Street  
Duryea, PA 18642

and

GIORDANO WASTE MATERIAL CO.,  
in its own capacity and as the  
successor to HALPERN METALS  
COMPANY  
c/o Camden Recycling  
2820 Mt. Ephraim Avenue  
Camden, NJ 08104

and

GOODYEAR TIRE & RUBBER CO.  
INC. f/t/a AMERON AUTO  
CENTERS  
1144 East Market Street  
Akron, Ohio 44316-0002

and

GORDON STEEL CO.  
Front & Bridge Streets  
Columbia, PA 17512

and

GORDON WASTE CO.  
Front & Bridge Streets  
Columbia, PA 17512

and

GREENBLOTT METAL CO., INC.  
9 Alice Street  
Binghamton, NY 13901



and

GUTTERMAN IRON & METAL CORP. ✓  
1206 E. Brambleton Avenue  
Norfolk, VA 23501

and

H&B METAL CO., INC.  
987-991 Metropolitan Avenue  
Brooklyn, NY 11211

and

H. & D. METAL COMPANY, INC. ✓  
Boundry Street  
P.O. Box 1978  
Salisbury, MD 21801

and

H. BIXON & SONS SCRAP & METAL  
808 Washington Avenue  
New Haven, CT 06516

and

H. SHAKESPEARE & SONS, INC. ✓  
655 Dubois Street  
P.O. Box 705  
Dubois, PA 15801

and

HAROLD STRAUSS, in his own  
capacity and as distributee  
of the assets of DENVER  
CONSTRUCTION CORPORATION  
f/d/b/a LUKENS METAL CO.  
13579 Verde Drive  
Palm Beach Gardens, FL 33410

and

HARRY GOLDBERG & SONS  
Second Cor Lewis Streets  
Perth Amboy, NJ 08862

and



HARRY'S SCRAPYARD  
3 East Market Street  
Scranton, PA 18510

and

HODES INDUSTRIES, INC.  
P.O. Box J  
Pleasant Gap, PA 16823

and

HUDSON SCRAP METAL, INC.  
P.O. Box 923  
Albany, NY 12201

and

HURWITZ BROS. IRON & METAL CO.,  
INC.  
267 Marilla Street  
P.O. Box 5 - South Park Section  
Buffalo, NY 14420

and

I. KRAMER AND SONS, INC.  
83 Essex Street  
Boston, MA 02109

and

I. RICHMAN & COMPANY, INC.  
40 Pennsylvania Avenue  
Washington, PA 15301

and

I. SHULMAN & SON CO., INC.  
197 East Washington Avenue  
Elmira, NY 14902

and

I. SOLOMON METAL CO., INC.  
580 Lynnway  
Lynn, MA 01950

and



INDEPENDENT IRON & METAL  
c/o Barney R. Radov  
4221 Sunnydale Boulevard  
Erie, PA 16509-1650

and

INDUSTRIAL & MILL SUPPLIERS,  
INC.  
1600 S. Jefferson Street  
P.O. Box 8278  
Roanoke, VA 24014

and

INTERSTATE BURLAP & BAG  
CO., INC.  
Box 202  
Great Bend, PA 18821

and

IRVING RUBBER & METAL COMPANY  
9515-25 Ditmas Avenue  
Brooklyn, NY 11236

and

ITHACA SCRAP PROCESSORS  
402 3rd Street  
Ithaca, NY 14850

and

J&J METALS INC.  
489 Frelinghausen Avenue H  
Newark, NJ 07114

and

J. BROOMFIELD & SONS, INC.  
473 Allens Avenue  
Providence, RI 02905

and

J.C. PENNEY COMPANY, INC.  
14841 N. Dallas Parkway  
Dallas, TX 75240

and





and

and

and

and

and

and

and

and



JULIAN C. COHEN SALVAGE CO.  
c/o Julien J. Moreau  
8617 Silvermeadow Lane  
Baltimore, MD 21236

KMART CORPORATION  
3100 W. Big Beaver Road  
Troy, MI 48084

KASMAR METALS, INC.  
307 Water Street  
Wadsworth, OH 44281

KASSAB BROS.  
P.O. Box 251  
Bloomsburg, PA 17815

KEARNY SCRAP CO.  
478 Schuiler Avenue  
Kearny, NY 07032

KELLEHER BATTERY /  
2117 Boulevard Avenue  
Scranton, PA 18509

KLEIN METAL CO., INC.  
1046 University Avenue  
Rochester, NY 14610

.....



KLIONSKY SCRAP IRON & METAL CO. :  
7 Chapin Street :  
P.O. Box 385 :  
Seneca Falls, NY 13148 :

and :

KOVALCHICK SALVAGE CO. :  
Logan Boulevard :  
Burnham, PA 17009 :

and :

KREIGER WASTE PAPER CO. :  
50 Portland Avenue :  
Rochester, NY 14065 :

and :

LAKE ERIE RECYCLING :  
127 Fillmore Avenue :  
P.O. Box 1056 :  
Buffalo, NY 14210 :

and :

LANCASTER BATTERY CO., INC. :  
1330 Harrisburg Avenue :  
Lancaster, PA 17604 :

and :

LANCASTER IRON & METAL CO., :  
INC., a former division of :  
LANCASTER STEEL CO., INC. :  
3915 Walden Avenue :  
Lancaster, NY 14086 :

and :

LARAMI METAL CO. :  
1173 Kings Mill Road :  
York, PA 17403 :

and :

LEVENE'S SON, INC. :  
18 Elizabeth Street :  
Binghamton, NY 13901 :

and :



LEVINE'S IRON & METAL, INC.  
P.O. Box 329  
Waynesburg, PA 15370

and

LEWIS RAPHAELSON & SON, INC.  
3rd and Commerce Streets  
Wilmington, DE 19801

and

LIBERTY IRON & METAL CO., INC.  
646 East 18th Street  
Erie, PA 16503

and

LONI-JO METALS  
f/t/a ATTONITO RECYCLING  
CORPORATION  
70/93 Kinkel Street  
Westburg/Nassau, NY 11590

and

LOUIS COHEN & SON, INC.  
P.O. Box 1004  
Wilkes-Barre, PA 18702

and

LOUIS FIEGLEMAN & CO.  
c/o Louis Fiegleman  
Morgan Highway  
Scranton, PA 18508

and

LOUIS KUTZ & SON  
Box 373  
Binghamton, NY 13902

and

LOUIS LEVIN & CO. (INC.)  
237 Filmore Avenue  
Tonawanda, NY 14150

and





LOUIS MACK CO. INC.  
750 Warren Avenue  
Portland, ME 04103

and

LUKENS METAL CORP. d/b/a  
LUKENS METAL CO.  
Hedley & Delaware Avenue  
Philadelphia, PA 19137

and

LYELL METAL CO., INC.  
1515 Scottsville Road  
Rochester, NY 14623

and

M&M SCRAP CORPORATION  
Peconic Avenue  
Medford, NY 11763

and

M&P SCRAP IRON & METAL CORP.  
1007 Long Island Avenue  
Deer Park, NY 11729

and

M.C. CANFIELD SONS f/k/a and  
f/t/a LUKENS METAL CORP.  
1000 Brighton Street  
Union, NJ 07083

and

M.H. BRENNER'S, INC.  
c/o Martin D. Cohn, Esquire  
First Valley Building  
6th Floor  
Hazleton, PA 18201

and

M. BURNSTEIN AND COMPANY, INC.  
40 Gerrish Avenue  
Chelsea, MA 02150

and



M. HARTMAN CO.  
154 Queenston Drive  
Pittsburgh, PA 15201

and

M. ROSENBERG & SON, INC.  
111 Border Rock Road  
Levittown, PA 19057

and

M. WILDER & SON, INCORPORATED  
569 N. Colony Street  
Meriden, CT 06450-2237

and

MARLEY'S DIVISION OF ABE COOPER  
c/o Jordan Recycling  
P.O. Box 2526  
Liverpool, NY 13089

and

MAX BROCK CO., INC.  
18 Metcalfe Street  
Buffalo, NY 14206

and

MAXNOR METAL/M. SCHIPPER & SON  
318 Badger Avenue  
Newark, NY 07108

and

METAL BANK OF AMERICA  
c/o Robert Weidner, Esquire  
Mattioni, Mattioni and Mattioni  
399 Market Street  
Philadelphia, PA 19106

and

MEYER-SABA METALS CO.  
Woodward Hill  
Edwardsville, PA 18704

and



MICHIGAN LEAD BATTERY CO.  
111 Victor Street  
Highland Park, MI 48203

and

MID-CITY SCRAP IRON &  
SALVAGE CO.  
548 State Road/Route 6  
Westport, MA 02790

and

MODERN JUNK & SALVAGE CO.  
1423 North Fremont Avenue  
Baltimore, MD 21217

and

MONTGOMERY IRON & METAL CO.  
15000 Southlawn Lane  
Rockville, MD 20850

and

MORGAN HIGHWAY AUTO PARTS  
Morgan Highway  
Scranton, PA

and

MORRIS J. RADOV  
f/d/b/a MEADVILLE WASTE  
COMPANY  
237 Jefferson Street  
Meadville, PA 16335

and

N. BANTIVOLGLIO'S SONS, INC.  
a/k/a BANTIVOLGLIO  
INVESTMENT CO.  
25 Chestnut Street  
Haddonfield, NJ 08033

and

NAPORANO IRON & METAL CO.  
Foot of Hawkins Street  
P.O. Box 5304  
Newark, NJ 07105



and

NEWBURGH SCRAP CO.  
110 Mill Street  
Newburgh, NY 12250

and

NEW CASTLE JUNK  
Sampson Street Ext.  
P.O. Box 1408  
New Castle, PA 16103

and

NOLT'S AUTO PARTS/NOLT'S  
FACTORY WAREHOUSE  
1500 Lincoln Heights Avenue  
Ephrata, PA 17522

and

NORFOLK RECYCLING CORPORATION  
1148 E. Princess Anne Road  
Norfolk, VA 23504

and

NORTHEAST INDUSTRIAL  
BATTERIES, INC.  
Eugene & David Drive  
Bristol, PA 19007

and

NOTT ENTERPRISES, INC.  
f/k/a FRANK H. NOTT, INC.  
900-1100 Book Road  
P.O. Box 27225  
Richmond, VA 23261

and

NOVEY METAL CO.  
2 West Pine Street  
Clearfield, PA 16830

and





OLEAN STEEL SALES & SERVICE,  
INC.  
Corner of East State Road  
P.O. Box 6  
Olean, NY 14760

and

P. JACOBSON, INC.  
486 Columbia Street  
Somerville, MA 02143

and

P.K. SCRAP METAL  
3542 Route 122  
Coram, NY 11727

and

PASCAP CO., INC.  
4250 Boston Road  
Bronx, NY 10475

and

PAVONIA SCRAP IRON & METAL  
COMPANY, INC.  
229-35 Johnston Avenue  
Jersey City, NJ 07302

and

PEDDLERS JUNK CO.  
73 Canton Street  
Hartford, CT 06120

and

PENN HARRIS METALS CORP.  
1605 North Cameron Avenue  
Harrisburg, PA 17103

and

PENN JERSEY RUBBER & WASTE CO.  
1112 Chestnut Street  
Camden, NJ 08103

and



PERLMAN & SONS  
54 S. Merriam Street  
Pittsfield, MA 01201

and

PETTINELLI IRON & METAL  
6610 Martin Street  
Rome, NY 13440

and

PHILIP LEWIS & SONS  
82-90 Kemble Street  
Roxbury, MA 02119

and

PHILIP MAY CO.  
601 Capouse Avenue  
Scranton, PA 18509

and

QUALITY STORES INC. d/b/a  
QUALITY FARM & FLEET  
1460 Whitehall Road  
Muskegon, MI 49445-1347

and

R&R SALVAGE, INC.  
1329 William Street  
Buffalo, NY 14206

and

R.L. POETH SCRAPYARD  
R.D. 3  
Lewisburg, PA 17837

and

RIEGEL SCRAP & SALVAGE  
518 Young Street  
P.O. Box 153  
Harve de Grace, MD 21078

and



RIVER ROAD PRODUCTS, INC.  
5000 Sunnyside Ave, Suite 301  
Beltsville, MD 20705

and

ROSEN BROTHERS  
130 Port Watson Street  
P.O. Box 12  
Cortland, NY 13045

and

ROTH BROTHERS SMELTING CORP.  
6223 Thompson Road  
East Syracuse, NY 13057

and

ROTH STEEL CORPORATION  
800 Hiawatha Boulevard  
West Syracuse, NY 13204

and

S&J GENERATORS &  
STARTER CO.  
601 Delaware Street  
Throop, PA 18512

and

S. KASOWITZ & SONS, INC. 192  
149 Front Avenue  
West Haven, CT 06516

and

S. KLEIN METALS CO., INC. 17  
2156 Camplain Road  
Somerville, NJ 08876

and

S. ROME & CO., INC.  
2 King Edward Road  
West Hartford, CT 06117

and



S.E.L. METAL CORPORATION  
P.O. Box 700  
935 Lincoln Avenue  
Holbrook, NY 11741

and

ST. MARY'S AUTO WRECKERS  
Rt. 255, Million Dollar Highway  
St. Mary's, PA 15857

and

SAMUEL GORDON AND SONS, INC.  
333 3rd Street  
Chelsea, MA 02150

and

SAM KAUFMAN & SON METAL CO.  
220 Saltonstall Street  
Canadaigua, NY 14424

and

SAM KASSAB  
436 South Hancock Street  
Wilkes-Barre, PA 18702

and

SCHIAVONE CORP.  
1032 Chapel Street  
New Haven, CT 06510

and

SCHILBERG INTERGRATED METALS/  
INC.  
f/d/b/a SCHILBERG IRON & METAL  
CO., INC.  
47 Milk Street  
Willimantic, CT 06226

and

SEABOARD SALVAGE  
128 N. Market Street  
Petersburg, VA 23803

and





SEGEL & SON, INC.  
107 S. South Street  
P.O. Box 276  
Warren, PA 16365

and

SHELL OIL CO. INC.  
One Shell Plaza  
Houston, TX 77001

and

SITKIN METAL TRADING, INC.  
c/o Lewis Sitkin  
4 Summit Manor  
Lewistown, PA 17044

and

SITKIN SMELTING & REFINING,  
INC.  
c/o Lewis Sitkin  
4 Summit Manor  
Lewiston, PA 17044.

and

SMITH IRON & METAL CO., INC  
3000 Bells Road  
P.O. Box 24284  
Richmond, VA 23224

and

SOLA METAL  
333 West 206th Street  
Bronx, NY 10034

and

SONE' ALLOYS INC.  
d/b/a ENOS METALS  
20 Dana Street  
Taunton, MA 02780

and

SQUARE DEAL METAL RECYCLING  
134-01 Atlantic Avenue  
Richmond Hill, NY 11418



and

STAGER WRECKING CO. 190  
P.O. Box 296  
Portage, PA 15946

and

STAIMAN INDUSTRIES, INC. 191  
19 Emma Street  
Binghamton, NY 13905

and

STATE LINE SCRAP CO., INC. 193  
Bacon Street  
P.O. Box S32  
South Attleboro, MA 02703

and

SUISMAN & BLUMENTHAL 194  
500 Flatbush Avenue  
P.O. Box 119  
Hartford, CT 06106

and

SYRACUSE MATERIALS RECOVERY  
CORP. 195  
301 Peat St.  
Syracuse, NY 13202

and

TED SCHWEEN 196  
829 George Street  
Throop, PA 18512

and

TEPLITZ'S MIDDLETOWN SCRAP 197  
f/t/a MIDDLETOWN SCRAP  
IRON, INC.  
75 Church Street  
Middletown, NY 10940

and



TEXTRON, INC.  
The Corporation Trust Co.  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

and

THE BEST BATTERY COMPANY, INC.  
4015 Fleet Street  
Baltimore, MD 21224

and

TIMPSON SALVAGE CO.  
677 Timpson Place  
Bronx, NY 10455

and

TOWANDA IRON AND METAL, INC.  
One River Street  
P.O. Box 209  
Towanda, PA 18848

and

TWIN CITIES WASTE & METAL  
R.D. 2 East Fulton Street Ext.  
Gloversville, NY 12078

and

UNION CORPORATION  
f/t/a JACOBSON METAL CO.  
492 Route 46 East  
Fairfield, NJ 07004-1070

and

UNITED HOLDING CO., INC.,  
a/k/a UNITED IRON & METAL  
COMPANY, INC.  
2545 Wilkens Avenue  
Baltimore, MD 21223

and

UNITED METAL TRADERS, INC.  
5240 Conlyn Street  
Philadelphia, PA 19138



and

UNITED SCRAP IRON & METAL CO.  
157 E. 7th Street  
Paterson, NJ 07524

and

UNITED STATES OF AMERICA

and

UNIVERSAL COOPERATIVES INC.  
7801 Metro Parkway  
Minneapolis, MN 55425-1518

and

UNIVERSAL WASTE, INC.  
Leland and Wurz Avenues  
P.O. Box 53  
Utica, NY 13503

and

V. VACCARO SCRAP CO.  
43 15th Street  
Brooklyn, NY 11215

and

VINCENT A. PACE SCRAP METALS,  
INC.  
73-75 Cornelison Avenue  
Jersey City, NJ 07314

and

VIRGINIA IRON & METAL COMPANY  
OF PORTSMOUTH, INC.  
Charles M. Lollar, Esquire  
Registered Agent  
700 Newtown Road  
Norfolk, VA 23502

and

VIRGINIA SCRAP IRON & METAL  
CO., INC.  
1600 S. Jefferson Street  
P.O. Box 8278  
Roanoke, VA 24014





and

WALDORF METAL CO.  
Route 488  
Bryantown, MD 20617

and

WALLACE STEEL, INC.  
105 Cherry Street  
Ithaca, NY 14850

and

WEINER BROKERAGE CORPORATION  
216 North Second Street  
Pottsville, PA 17901

and

WEINER IRON & METAL CORP.  
Route 61  
P.O. Box 359  
Pottsville, PA 17901

and

WEINSTEIN CO.  
610 West 8th Street  
Jamestown, NY 14701

and

WESTERN AUTO SUPPLY CO.  
2107 Grand Avenue  
Kansas City, MO 64108

and

WILLIAM F. SULLIVAN CO., INC.  
107 Appleton Street  
Holyoke, MA 01040

and

WILLIAM R. SULLENBERGER CO.  
3800 Kreig St.  
Moosic, PA 18507

and



WILSON BATTERY & OIL COMPANY  
RR 1  
Beach Lake, PA 18405-0027

and

WIMCO METALS, INC.  
401 Penn Avenue  
P.O. Box 8863  
Pittsburgh, PA 15221

and

WM. KUGLER & BRO., INC.  
5220 Lockport-Junction Road  
Lockport, NY 14094

and

WM. PORT'S SONS, INC.  
435 Border City Road  
Geneva, NY 14456

and

WORCESTER METAL & BATTERY  
c/o Frank A. Iovello  
6 Iona Avenue  
Shrewsbury, MA 01545

and

YATES BATTERY CO.  
Rear 347 N. Main Avenue  
Dickson City, PA 18519

and

ZUCKERMAN COMPANY, INC.  
Route 11 North  
P.O. Box 3275  
Winchester, VA 22601

and



ZUCKERMAN STEEL COMPANY, INC. :  
P.O. Box 528 :  
Front Royal, VA 22630

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**THIRD AMENDED COMPLAINT**

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1. Plaintiff Gould Inc. ("Gould") brings this action pursuant to sections 107 and 113 of the Comprehensive Environmental Compensation, Response, and Liability Act ("CERCLA"), as amended, 42 U.S.C. §§ 9607 and 9613, to recover response costs expended by it with respect to the property known as the Marjol Battery & Equipment Company located in the Borough of Throop, Lackawanna County, Pennsylvania ("the Marjol site") and the surrounding area. Gould also seeks a declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202, and 42 U.S.C. § 113(g)(2) declaring its right to recover past and future response costs in connection with the Marjol site and the surrounding area. Gould also asserts a claim for indemnity and contribution under Pennsylvania law and for restitution for all costs it has incurred and may incur with respect to the Marjol site and the surrounding area.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and



9613; 42 U.S.C. § 1331; and the doctrines of pendent and ancillary jurisdiction.

3. This Court has authority to issue a declaratory judgment concerning the rights and liabilities of the parties pursuant to 28 U.S.C. §§ 2201, 2202 and 42 U.S.C. § 9613(g)(2).

4. Venue is proper in the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 9613(b) because the Marjol site is located within this district and the alleged release of hazardous substances occurred in this district.

#### PARTIES

5. Plaintiff Gould is a corporation in the business of electronics organized and existing under the laws of the State of Delaware with its principal place of business in Eastlake, Ohio.

6. Each defendant is found, resides in, or transacts business in the United States and is a person within the meaning of section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

#### BACKGROUND

7. The Marjol site is approximately 43 acres in size and is located in the Borough of Throop, Lackawanna County, Pennsylvania.





8. From approximately 1963 to 1980, Lawrence Fiegleman owned and operated a battery crushing and lead recovery operation at the Marjol site.

9. Gould purchased the Marjol Battery & Equipment Company from Mr. Fiegleman in May 1980 and continued its operation until April 1981. From November 1981 through April 1982, Gould used the Marjol site strictly as a transfer station for batteries being shipped to other sites. In April 1982, Gould ceased all operations at the site.

10. During the operation of the Marjol site, hazardous substances, including lead, were inadvertently released into the soils in and around the site, including the soils of neighboring properties.

11. In 1987, the United States Environmental Protection Agency ("EPA") performed an investigation of the levels of lead and other hazardous substances at the Marjol site and the surrounding area.

12. In April 1988, the EPA required Gould to enter into a Consent Agreement and Order pursuant to section 106 of CERCLA, 42 U.S.C. § 9606, to, inter alia, conduct site stabilization activities concerning lead and other hazardous substances at the Marjol site and address lead-contaminated soils on nearby residential properties ("the EPA CERCLA Order"). Pursuant to



that Order, as amended, Gould has undertaken the following response actions, among others:

a. The preparation and implementation of a Site Health and Safety Plan.

b. Site security measures, including the installation of fencing around the site and surrounding contaminated property and the provision of 24-hour guard service.

c. Site stabilization measures to address potential contamination from disposed battery casings, including the designation of haul roads; providing vegetative cover over exposed areas and broken asphalt; the demolition of remaining buildings and foundations; the paving or covering of parking and equipment storage areas; the installation of stormwater runoff control structures, including diversions, check dams and a stormwater detention basin; perimeter air quality monitoring; and site maintenance.

d. A study to determine the extent of contamination ("EOC") relating to the Marjol site, which included over 400 soil samples; the sampling of ground and surface water; the submission of a report to EPA in May 1989; the conducting of further studies at EPA's direction; the preparation of a supplemental EOC report (now in progress); and specialized soil tests.

e. Removal of contamination from nearby residences as identified on the EOC study, including the removal of



contaminated soils from 125 properties and stockpiling of that soil on the Marjol site; the removal of trees and shrubs; the restoration of excavated properties; the excavation and restoration of a contaminated stream bed; the excavation and installation of a 1500 linear foot storm sewer in a drainage ditch; interior housecleaning at residences where exterior excavation occurred; the excavation of battery casings beneath a Borough street and rebuilding of the road; the demolition of two houses; the provision of temporary residences during removal activities; the performing of annual blood lead monitoring to ensure that response actions did not adversely affect residents; the excavation of strip mining pits that had been backfilled with contaminated soils and battery casings; and the implementation of a community relations program including a full-time representative, newsletters and community meetings.

f. The preparation and submission to EPA for approval of work plans and design drawings and specifications prior to undertaking specific tasks, and the preparation and submission to EPA of reports following the completion of tasks.

13. Gould has completed most requirements under the CERCLA Consent Order and expects to complete all required actions in compliance with that order by January 1992 or thereabouts.

14. As of the date of the filing of this complaint, Gould has incurred in excess of \$17.5 million in costs in connection with the performance of its obligations under the EPA CERCLA



Order. Those costs were incurred by Gould consistent with the National Contingency Plan, 40 C.F.R. Part 300 (the "NCP"). Gould also has incurred costs associated with identifying and locating defendants in excess of \$200,000. Gould will incur costs in the future pursuant to the EPA CERCLA Order consistent with the NCP.

15. In May 1990, the EPA required Gould to enter into a Consent Agreement and Order pursuant to section 3008(h) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(h), to undertake interim measures and a facility investigation concerning hazardous wastes allegedly found at the Marjol site ("the EPA RCRA Order").

16. Pursuant to the EPA RCRA Order, Gould has completed or commenced the following response actions, at a cost of more than \$1 million.

a. Completed the development and submission to EPA of work plans to perform a RCRA Facility Investigation ("RFI").

b. Completed the implementation of RFI tasks including a hydrogeologic investigation of the Marjol site consisting of the installation of 17 groundwater monitor wells and the collection and analysis of groundwater samples and elevations from those wells; conducting of air monitoring at and around the Marjol site; collection of more than 500 soil samples





of on-site fill areas to determine the volume, physical characteristics and chemical characteristics of contaminated fill.

c. Commenced a mine subsidence study.

d. Commenced treatability studies for contaminated soils and battery casings.

17. The actions that Gould has performed thus far and the costs it has incurred in compliance with the requirements of the EPA RCRA Order have been performed and incurred consistent with the NCP. Gould will perform acts and incur costs in the future pursuant to that Order in a manner consistent with the NCP. Those actions will include the preparation and submission to EPA of a final RFI report and a mine subsidence study; the conduct of a baseline risk assessment; the completion of treatability studies; and the conduct of a corrective measures study to identify and assess alternative cleanup measures for the Marjol site that may be necessary to protect human health and the environment. Gould may also incur additional response costs in the future to remediate the site in a manner consistent with the NCP.

COUNT I (Section 107 Cost Recovery)

18. Gould incorporates by reference the allegations of paragraphs 1 through 17 as though fully set forth.



19. Under CERCLA section 107(a)(3), 42 U.S.C. § 9607(a)(3), persons who arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at a facility from which there has been a release or threatened release of a hazardous substance are liable for, inter alia, all costs of removal or remedial action incurred by any other person consistent with the NCP.

20(A)        Eric's Iron and Steel Corporation,  
                  Eric Pirchesky and Anne Pirchesky.

Between 1963 and 1989, Riverside Iron & Steel Corporation, a Pennsylvania Corporation trading as "Riverside Iron and Steel," operated a scrap business and generated and/or possessed hazardous substances in the form of spent lead-acid batteries, or "junk" batteries, and other forms of lead containing scrap. Its sole shareholders, on information and belief, were Eric Pirchesky and Anne Pirchesky ("the Pirchesky's"). On information and belief, on or about October 5, 1989, Riverside Iron & Steel Corporation entered into an asset purchase agreement with American Scrap Processing, Inc., an Illinois Corporation ("ASP"). On information and belief, under that agreement, among other things, ASP acquired substantially all of the non-cash assets of Riverside Iron and Steel Corporation, including the trade name "Riverside Iron and Steel," goodwill, and the real estate and other physical property owned or utilized by Riverside Iron & Steel Corporation for its business. On information and belief, shortly after October 5, 1989, Riverside Iron & Steel Corporation



changed its name to Eric's Iron and Steel Corporation ("Eric's"), a Pennsylvania corporation whose sole shareholders continued to be the Pirchesky's. On information and belief, in or about April 1991 Eric's commenced dissolution proceedings pursuant to Pennsylvania law. On information and belief, all assets of Eric's have been distributed to the Pirchesky's, as former shareholders of Eric's.

Eric's and the Pirchesky's are subject to the claims asserted by plaintiff herein pursuant to 15 Pa. Cons. Stat. Ann., §§ 1979 and 1998 (Purdon Supp. 1991).

(B) Denver Construction Corporation, Harold P. Strauss, Lukens Metal Corporation and M.C. Canfield Sons

Until and including 1982, Denver Construction Corporation ("Denver"), a Pennsylvania corporation trading as Lukens Metal Company ("Lukens Co."), was engaged in the business of, among other things, manufacturing lead solder and also generated and/or possessed hazardous substances in the form of spent lead-acid batteries, or "junk" batteries, and other forms of lead-containing scrap. On information and belief, Harold P. Strauss ("Strauss") was a principal and the sole shareholder of Lukens Co. On information and belief, in or about 1984 M.C. Canfield Sons ("Canfield"), a New Jersey Corporation engaged, among other things, in the manufacture of lead solder and alloys, created a wholly-owned acquisition subsidiary named Lukens Metal Corporation ("Lukens Corp."). On information and



and/or processing of hazardous substances including lead-bearing scrap and engaged in substantially the same business as Denver and Strauss. . On information and belief, plaintiff lacks an adequate remedy against Denver and Strauss.

Lukens Corp. and its alter ego, Canfield, are subject to the claims asserted by plaintiff herein as the corporate successor to Denver and Strauss. Strauss is subject to the claims asserted by plaintiff herein directly as a result of his personal activities in relation to the Marjol site as the alter ego of Denver; and as constructive trustee of the assets of Denver distributed to him.

(C) Bladensburg River Road Metals Company, Inc.

Between 1963 and 1982, Bladensburg Metals, Inc., a Delaware corporation ("Bladensburg"); River Road Products, Inc., a Maryland corporation ("River Road"); and River Road Iron & Metal, Inc., a Delaware corporation ("River Road Iron") (collectively, "Bladensburg/River Road") individually and collectively generated and/or possessed hazardous substances in the form of spent lead-acid batteries, or "junk" batteries," and other forms of lead-containing scrap. On information and belief, on or about December 12, 1985, Bladensburg/River Road entered into a purchase agreement with Benjamin Wyron ("Wyron") and Melvin Freeman ("Freeman"), under which the purchasers acquired substantially all of the assets of Bladensburg/River Road. Wyron and Freeman are the sole shareholders of Bladensburg River Road Metals





Company, Inc. ("Bladensburg II"). Wyron is also the Vice President and Secretary of Bladensburg II, and Freeman is also the President and Treasurer of Bladensburg II. Until 1985 Freeman was a manager, and Wyron the foreman, of Bladensburg. On information and belief, Bladensburg II continues to operate out of the same location as Bladensburg/River Road and has continued substantially in the same line of business as Bladensburg/River Road, including the generation and/or possession of lead-containing scrap. On information and belief, the corporate charters of Bladensburg and River Road Iron were forfeited in 1987, and River Road, although an existing corporation, is not an entity against whom plaintiff can obtain the requested relief.

Bladensburg II is subject to claims asserted by plaintiff herein as the corporate successor to Bladensburg/River Road.

(D) United States of America

On information and belief, the United States of America, through its Department of Defense ("DOD") including the United States Navy ("Navy"), United States Air Force ("Air Force") and United States Army ("Army"), generated and/or possessed hazardous substances in the form of lead-acid batteries, or "junk" batteries, or other forms of lead-containing scrap.



(E) Morris J. Radov formerly doing business as  
Meadville Waste Company

Until and including December 31, 1980, Morris J. Radov ("Radov") was the owner and sole proprietor of Meadville Waste Company ("Meadville Waste"). Radov operated Meadville Waste as a scrap business and generated and/or possessed hazardous substances in the form of spent lead-acid batteries, or "junk" batteries, and other forms of lead containing scrap. On information and belief on January 1, 1980, Radov sold all of Meadville Waste's real estate and equipment to Lincoln Metal Processing Co., Inc. ("Lincoln Metal"), a Pennsylvania corporation whose President and sole shareholder is Howard C. Lincoln. On or about January 7, 1980, Lincoln Metal received certification from the Prothonotary of Crawford County, Pennsylvania to conduct business under the fictitious name Meadville Metal Company ("Meadville Metal"). Lincoln Metal doing business as Meadville Metal, however, did not assume the liabilities of Meadville Waste nor did it succeed to the same line of business as Meadville Waste including the generation and/or possession of lead-containing scrap. Lincoln Metal doing business as Meadville Metal and Howard C. Lincoln are therefore not subject to the claims asserted by plaintiff. Radov, on the other hand, is subject to the claims asserted by plaintiff herein as the owner and sole proprietor of Meadville Waste during the years in which the relevant transactions with the Marjol site occurred.



(F) All Other Defendants

Defendants generated and/or possessed hazardous substances in the form of spent lead-acid batteries, or "junk" batteries, and other forms of lead-containing scrap.

21(A)        Eric's Iron and Steel Corporation,  
              Eric Pirchesky and Anne Pirchesky.

Plaintiff repeats and alleges the allegations of paragraph 20(A) of the complaint. Riverside Iron and Steel Corporation arranged with transporters for the transport of junk batteries and other lead- and acid-containing scrap to the Marjol site for the purpose of treatment and disposal by crushing, grinding, sawing, and/or melting, including disposal of battery acid and unusable lead-contaminated portions of the batteries and other scrap material. Riverside Iron & Steel Corporation also arranged for the disposal and treatment of such materials at the Marjol site.

(B)        Denver Construction Corporation, Harold P.  
              Strauss, Lukens Metal Corporation and M.C.  
              Canfield Sons.

Plaintiff repeats and alleges the allegations of paragraph 20(B) of the complaint. Denver Construction Corporation and Strauss arranged with transporters for the transport of junk batteries and other lead- and acid-containing scrap to the Marjol site for the purpose of treatment and disposal by crushing, grinding, sawing, and/or melting, including disposal of



battery acid and unusable lead-contaminated portions of the batteries and other scrap material. Denver Construction Corporation and Strauss also arranged for the disposal and treatment of such materials at the Marjol site.

(C) Bladensburg River Road Metals Company, Inc.

Plaintiff repeats and alleges the allegations of paragraph 20(C) of the complaint. Bladensburg/River Road arranged with transporters for the transport of junk batteries and other lead- and acid-containing scrap to the Marjol site for the purpose of treatment and disposal by crushing, grinding, sawing, and/or melting, including disposal of battery acid and unusable lead-contaminated portions of the batteries and other scrap material. Bladensburg/River Road also arranged for the disposal and treatment of such materials at the Marjol site.

(D) United States of America

On information and belief, the United States of America, through the DOD, including the Navy, Air Force, Army and Defense Reutilization and Marketing Service, arranged with transporters and/or brokers for the transport of junk batteries and other lead- and acid-containing scrap to the Marjol site for the purpose of treatment and disposal by crushing, grinding, sawing and/or melting, including disposal of battery acid and unusable lead-contaminated portions of the batteries and other scrap material. On information and belief, said defendant also





arranged for the disposal and treatment of such materials at the Marjol site. On information and belief, said defendant arranged for the foregoing activities either on its own or with or through, among others, the defendants Bristol Metal Co., Inc. and Union Corporation f/t/a Jacobson Metal Co.

(E) Morris J. Radov formerly doing business as  
Meadville Waste Company

Plaintiff repeats and alleges the allegations of paragraph 20(E) of the complaint. Radov doing business as Meadville Waste arranged with transporters for the transport of junk batteries and other lead- and acid-containing scrap to the Marjol site for the purpose of treatment and disposal by crushing, grinding, sawing, and/or melting, including disposal of battery acid and unusable lead-contaminated portions of the batteries and other scrap material. Radov doing business as Meadville Waste also arranged for the disposal and treatment of such materials at the Marjol site.

(F) All Other Defendants

Defendants arranged with transporters for the transport of junk batteries and other lead- and acid-containing scrap to the Marjol site for the purpose of treatment and disposal by crushing, grinding, sawing, and/or melting, including disposal of battery acid and unusable lead-contaminated portions of the batteries and other scrap material. Defendants also arranged for the disposal and treatment of such materials at the Marjol site.



22. Lead is a hazardous substance within the meaning of section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

23. Battery acid is a hazardous substance within the meaning of section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24. The Marjol site is a facility within the meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

25. There has been a release or threat of release of hazardous substances, including lead, from the Marjol site within the meaning of section 101(22) of CERCLA, 42 U.S.C. 9601(22).

26. Gould has incurred and will continue to incur response costs that are consistent with the NCP with respect to the Marjol site to abate the release or threatened release of hazardous substances into the environment which has occurred or may occur from the Marjol site.

27. Defendants are liable to Gould under section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for some or all of the necessary costs of response incurred or to be incurred by Gould consistent with the NCP with respect to the Marjol site.

WHEREFORE, plaintiff, Gould Inc., demands judgment in its favor and against all defendants:

(1) Declaring that all defendants are liable for response costs incurred thus far by Gould which are consistent with the NCP;



(2) Declaring that all defendants are liable for future response costs Gould may incur which are consistent with the NCP;

(3) Ordering all defendants to reimburse Gould for all response costs incurred by Gould to date and all response costs Gould may incur which are consistent with the NCP;

(4) Awarding Gould its enforcement costs and other costs and attorneys' fees in this action;

(5) Awarding Gould prejudgment interest; and

(6) Awarding Gould any other relief this Court deems appropriate.

COUNT II (Section 113 Contribution)

28. Gould incorporates by reference the allegations of paragraphs 1 through 27 as though fully set forth.

29. Pursuant to section 113(f)(i) of CERCLA, 42 U.S.C. § 9613(f)(i), any person may seek contribution from any other person who is liable or potentially liable under section 107(a) of CERCLA.

30. Gould has a right of contribution under section 113(f)(i) of CERCLA against each and every defendant named in this complaint to recover response costs Gould has incurred and will incur regarding the Marjol site.



WHEREFORE, plaintiff, Gould Inc., demands judgment in its favor and against all defendants:

(1) Declaring that each defendant is liable under section 113(f)(i) of CERCLA to provide contribution to Gould for response costs Gould has incurred and will incur in connection with the Marjol site;

(2) Ordering that each defendant provide contribution to Gould in the amounts determined by this Court to be owed to Gould for response costs incurred in connection with the Marjol site;

(3) Awarding Gould its enforcement costs and other costs and attorneys' fees in this action;

(4) Awarding Gould prejudgment interest; and

(5) Awarding Gould any other relief this Court deems appropriate.

**COUNT III (Indemnification and Contribution)**

31. Gould incorporates by reference the allegations of paragraphs 1 through 30 as though fully set forth.

32. All defendants are solely liable and/or jointly and severally liable for any and all costs incurred by Gould or which will be incurred by Gould in connection with the Marjol site and are thus liable over to Gould for indemnity and/or





contribution under Pennsylvania or any other applicable state law for all sums that Gould has expended to date or will expend in the future in connection with the Marjol site.

WHEREFORE, plaintiff, Gould Inc., demands judgment in its favor and against all defendants:

(1) Declaring that each defendant is liable to indemnify Gould or to provide Gould with contribution for all costs Gould has incurred or will incur in connection with the Marjol site;

(2) Ordering each defendant to reimburse Gould by way of either indemnity or contribution for all or part of the costs Gould has incurred or will incur in connection with the Marjol site;

(3) Awarding Gould its enforcement costs and other costs and attorneys' fees in this action;

(4) Awarding Gould prejudgment interest; and

(5) Awarding Gould any other relief this Court deems appropriate.

COUNT IV (Restitution)

33. Gould incorporates by reference the allegations of paragraphs 1 through 32 as if fully set forth.



34. All defendants are solely liable and/or jointly and severally liable for any and all costs in connection with the cleanup of the Marjol site. All defendants therefore have a legal obligation to either clean up the Marjol site or in turn reimburse the federal and state governments for the cleanup of this site.

35. By agreeing to clean up the Marjol site, Gould has relieved the defendants of their legal obligation under both federal and state law to clean up this site. Accordingly, defendants have been unjustly enriched at the expense of Gould Inc.

36. Gould is entitled to restitution from all defendants for the cost of cleaning up the Marjol site.

WHEREFORE, plaintiff, Gould Inc., demands judgment in its favor and against all defendants:

(1) Declaring that all defendants have been unjustly enriched by virtue of the cleanup of this site by Gould Inc., and therefore have a legal duty to provide restitution to Gould for the cost that it has incurred thus far in cleaning up contamination arising from the Marjol site;

(2) Declaring that all defendants are liable to provide restitution to Gould for future response costs Gould may incur;

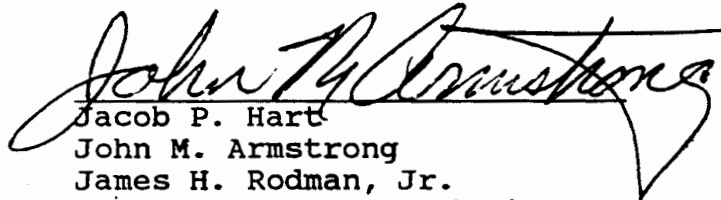


(3) Ordering all defendants to reimburse Gould for all response costs incurred by Gould to date and all response costs Gould may incur in the future;

(4) Awarding Gould its enforcement costs and other costs and attorneys' fees in this action;

(5) Awarding Gould prejudgment interest; and

(6) Awarding Gould any other relief this Court deems appropriate.



Jacob P. Hart  
John M. Armstrong  
James H. Rodman, Jr.  
Attorneys for Plaintiff,  
Gould Inc.

SCHNADER, HARRISON, SEGAL & LEWIS  
Suite 3600  
1600 Market Street  
Philadelphia, Pennsylvania 19103

Of Counsel.

Dated: November 3, 1993



**SCHNADER, HARRISON, SEGAL & LEWIS**

ATTORNEYS AT LAW

SUITE 120

220 LAKE DRIVE EAST

CHERRY HILL, NEW JERSEY 08002-1165

609-482-5222

FAX: 609-482-6980

LOUIS R. MOFFA, JR.

NEW JERSEY MANAGING PARTNER

November 3, 1993

(609) 482-5222

HAND DELIVER

Ms. Janet E. Wentovich  
Deputy Clerk  
United States District Court for the  
Middle District of Pennsylvania  
North Washington Avenue and Linden Street  
Scranton, Pennsylvania 18503

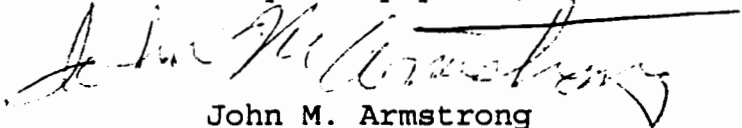
Re: Gould Inc. v. A&M Battery & Tire Service,  
et al., M.D. Pa., Civil Action No. 91-1714

Dear Ms. Wentovich:

Plaintiff, Gould Inc., has filed its third amended complaint in the above named case. In order to effectuate service of this complaint, plaintiff requests the issuance of fifty (50) Summonses to effect service of process on only the newly named defendants.

If you have any questions, please feel free to contact me at the above listed number at your earliest convenience. Thank you for your anticipated cooperation in this matter.

Very truly yours,



John M. Armstrong  
For SCHNADER, HARRISON, SEGAL & LEWIS





3rd JUDGE CONABOY  
HALL

(185)  
DHS  
6-2-92

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GOULD, INC.,

Plaintiff

v.

MODERN JUNK AND SALVAGE CO.,  
Defendant and Third-  
Party Plaintiff, et al

v.

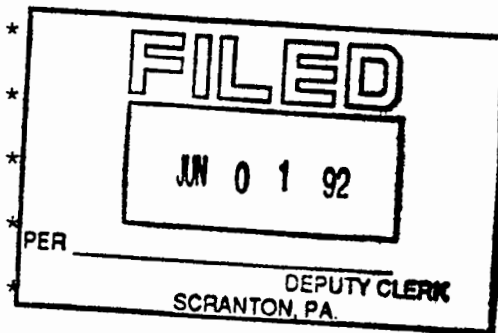
PHILLIP A. WEINSTEIN  
7203 Rockland Hills Dr.  
Apt. 309  
Baltimore, MD 21209,  
Third-Party Defendant

and

ESTATE OF JOSEPH WEINSTEIN  
SERVE ON: GLORIA WEINSTEIN  
Surviving Spouse and  
Putative Personal  
Representative  
6318 Greenspring Ave.  
Baltimore, MD 21209,  
Third-Party Defendant

3:CV-91-1714

(CHIEF JUDGE CONABOY)



THIRD-PARTY COMPLAINT

MODERN JUNK AND SALVAGE CO., one of the defendants, by its undersigned attorneys, for Third-Party Complaint, sues the Third-Party Defendants, PHILLIP A. WEINSTEIN, and ESTATE OF JOSEPH WEINSTEIN, and alleges as follows:

1. This Third-Party Complaint is filed in accordance with Paragraph 11 of Case Management Order Number 1, entered in this action on or about January 16, 1992. In accordance with the further provisions of Case Management



Order Number 1, Third-Party Plaintiff expressly reserves the right to allege any and all other claims and defenses which could be asserted by answer, motion or other pleading including but not limited to those which may be asserted by dispositive motion when the Court lifts the stay upon the filing of such motions.

2. On or about December 23, 1991, Plaintiff, Gould, Inc. ("Gould") commenced this action against defendant, Modern Junk and Salvage Co. and 141 other defendants, by the filing of its complaint, a copy of which is attached hereto as Exhibit A.

3. In its Complaint, Gould alleges that from approximately 1963 through April 1982, the so-called "Marjol site," located in Lackawanna County, Pennsylvania, presently and since May 1980 owned by Gould and previously owned by one Lawrence Fiegleman, was utilized as the site of a battery crushing and lead recovery operation and upon which site hazardous substances were released into and around the site and surrounding properties.

4. In its Complaint, Gould further alleges that defendant, Modern Junk and Salvage Co. and each of the other defendants generated and/or possessed hazardous substances in the form of lead-acid batteries or other lead-containing scrap which was transported to the Marjol site for treatment and disposal, on account of which Gould seeks to hold the defendants liable for some or all of the response costs



incurred or to be incurred by Gould in connection with the abatement of the release or threatened release of hazardous substances into the environment which has occurred or may occur from the Marjol site.

5. Defendant, Modern Junk and Salvage Co. (hereinafter sometimes "Modern No. 3") is a Maryland general partnership, owned and operated by its general partners, Herbert Brightman and Joseph S. Brightman, with its principal place of business located at 1423 North Fremont Avenue, Baltimore, Maryland, since its formation on or about January 1, 1982.

6. For a substantial number of years prior to 1963 through July 1, 1977, Phillip A. Weinstein and Joseph Weinstein operated a business trading as Modern Junk and Salvage Co., (hereinafter sometimes "Modern No. 1") with its principal place of business located at 1423 North Fremont Avenue, Baltimore, Maryland, as a Maryland general partnership.

7. On or about July 1, 1977, Phillip Weinstein sold all of his one-half interest in the furniture, equipment and machinery of Modern No. 1 to Herbert Brightman.

8. On or about July 10, 1977, Herbert Brightman and Joseph Weinstein formed a partnership for the purpose of carrying on and conducting a business to be called Modern Junk and Salvage Co. (hereinafter sometimes "Modern No. 2")



at 1423 North Fremont Avenue, Baltimore, Maryland and conducted such business until December 31, 1981.

9. On or about December 31, 1981, Joseph Weinstein sold all of his one-half interest in the furniture, equipment and machinery of said partnership to Joseph S. Brightman. Thereafter, Herbert Brightman and Joseph S. Brightman formed the partnership which trades as Modern Junk and Salvage Co. and which is a defendant in this action.

10. Joseph Weinstein ("Decedent") died in, approximately July 1989, a resident of Baltimore City or Baltimore County, Maryland, and to the best information and belief of Third-Party Plaintiff, no probate estate has been opened for Decedent.

11. Pursuant to Section 8-104(e) of the Estates and Trusts Article of the Annotated Code of Maryland, Third-Party Plaintiff believes and therefore avers that one or more policies of liability insurance under which Decedent was an insured exist and provide insurance coverage for the occurrences which are the subject of this action.

12. To the best knowledge and belief of Third-Party Plaintiff, Decedent died intestate, and under Section 5-104 of the Estates and Trusts Article of the Annotated Code of Maryland, the Decedent's surviving spouse is entitled to priority in being named as Decedent's Personal Representative.





13. If no probate estate has been opened or is opened for Decedent by the persons entitled to priority in being named as Decedent's Personal Representative, Third-Party Plaintiff will institute a judicial probate proceeding in the appropriate jurisdiction to open a probate estate for Decedent for litigation purposes in order to make claims against any policies of insurance of Decedent providing coverage for the matters complained of in this action and to ascertain whether Decedent had other probate assets or assets which should have been subject to probate which have been transferred outside of probate.

14. Each Third-Party Defendant is found, resides in, or transacts business in the United States and is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

COUNT I  
(Indemnification)

15. All or substantially all of the transactions and occurrences complained of by Plaintiff upon which Plaintiff seeks to impose liability upon Third-Party Plaintiff were transactions to which Modern No. 1 or Modern No. 2, but not Modern No. 3, were parties or occurrences for which Modern No. 1 or Modern No. 2, but not Modern No. 3, caused or were responsible.

16. At no time did Modern No. 3 or its general partners, Herbert Brightman or Joseph Brightman participate



in, have any interest in, or assume any liability on behalf of Modern No. 1.

17. At no time did Modern No. 3 or its general partner Joseph Brightman participate in, have any interest in, or assume any liability on behalf of Modern No. 2.

18. The conditions alleged in the Complaint occurred as a result of and from actions and activities of Modern No. 1 and Modern No. 2 and of the Third-Party Defendants, and not as a result of any act or omission of Third-Party Plaintiff or its general partners.

19. Modern No. 1 and Modern No. 2 have each been dissolved and all of the assets of each distributed to Third-Party Defendants.

WHEREFORE, Third-Party Plaintiff respectfully prays that if any relief be granted against Third-Party Plaintiff, that judgment be entered against Third-Party Defendants and each of them for indemnification, including the costs and fees incurred in the defense of this action, and such further relief as the Court may deem to be just and proper.

COUNT II  
(Contribution)


20. Third-Party Plaintiff incorporates by reference the allegations of paragraph 1 through 17 as though fully set forth.

21. To the extent that Third-Party Plaintiff may be liable for any of the harm incurred or alleged to have



been suffered by Plaintiff, Third-Party Defendants and each of them was a general partner of Third-Party Plaintiff jointly and severally liable for the actions and debts of Third-Party Plaintiff.

WHEREFORE, Third-Party Plaintiff respectfully prays that if any relief be granted against Third-Party Plaintiff that judgment be entered against Third-Party Defendants and each of them for contribution for their respective proportionate shares of such relief, based upon their respective conduct and legal liability, including the costs and fees incurred in the defense of this action, and such further relief as this Court may deem just and proper.



---

William J. Rubin  
Rubin and Snyder  
22 Light Street  
Suite 400  
Baltimore, MD 21202  
(410) 539-1700

Attorneys for Defendant  
and Third-Party Plaintiff  
Modern Junk and Salvage Co.

Dated: June 1, 1992



Certificate of Service

I hereby certify that I have this 1st day of June, 1992, served a true and correct copy of the foregoing Third-Party Complaint (excluding Exhibit A), by first class mail, postage prepaid, upon all parties and counsel of record at the addresses listed in the most recent "Service List."



William J. Rubin  
Rubin and Snyder  
22 Light Street  
Suite 400  
Baltimore, MD 21202  
(410) 539-1700

Attorneys for Defendant  
and Third-Party Plaintiff  
Modern Junk and Salvage Co.





IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GOULD INC.,

Plaintiff,

v.

A & M BATTERY & TIRE SERVICE  
414 Spring Street  
Elizabeth, NJ 07201

and

CHARLES MEYER & SON  
Keystone Industrial Park  
Dunmore, PA 18512

and

ALBERT NIVERT & CO.  
Keystone Industrial Park  
Dunmore, PA 18512

and

A. SHAPIRO & SONS  
341 Ashland Street  
P.O. Box 711  
North Adams, MA 01247

and

ABE COOPER-WATERTOWN CORP.  
Corporate Cherry Island  
Alexandria Bay, NY 13607

and

ALEXANDRIA SCRAP CORPORATION  
c/o Joseph Smith & Son  
2324 Mill Road  
Alexandria, VA 22314

and

ALL STATE METAL COMPANY  
61-63 Arch Street  
Albany, NY 12202

and

FILED  
SCRANTON

DEC 28 1991

PER 14  
DEPUTY CLERK

CIVIL ACTION NO.

91-

3: CV-91-1714



ALLAN INDUSTRIES  
P.O. Box 999  
Interstate 81 & Blackman Sts.  
Wilkes-Barre, PA 18703

and

AMERICAN SCRAP CO.  
2201 North 7th Street  
Harrisburg, PA 17110

and

ATTONITO RECYCLING CORPORATION  
70 Kinkel Street  
Westbury/Nassau, NY 11590

and

B. MILLENS & SONS INC.  
290 East Strand Street  
C P O Box 1940  
Kingston, NY 12401

and

BARNEY SNYDER, INC.  
Bridge St. Ext.  
P.O. Box 391  
Burgettstown, PA 15021

and

BEN WEITSMAN & SON  
Brandywine Avenue  
P.O. Box 1326  
Binghamton, NY 13902

and

BEN WEITSMAN & SON, INC.  
15 W. Main Street  
P.O. Box 420  
Owego, NY 13827

and

BODOW RECYCLING CO.  
1925 Park Street  
Syracuse, NY 13208

and



BROCK'S SCRAP & SALVAGE  
220 West King Street  
P.O. Box 720  
Cumberland, MD 21502

and

BRISTOL METAL CO., INC.  
58 Broad Common Road  
P.O. Box 596  
Bristol, RI 02809

and

BROOKFIELD AUTO WRECKERS, INC.  
275 Lamont Street  
Elmsford, NY 10523

and

BROOKFIELD METAL CO.  
280 Lamont Street  
Elmsford, NY 10523

and

BUFFERED JUNK CO.  
121 Knowlton Street  
Bridgeport, CT 06497

and

CRASH'S AUTO PARTS & AUTO  
SALES/CAP SURPLUS SCRAP METAL  
R. D. 2  
Frankfort, NY 13340

and

CHAPIN & FAGIN DIV. OF GCF INC.  
105 Dorothy Street  
Buffalo, NY 14206

and

CHARLES BLUESTONE CO., INC.  
Glassport-Elizabeth Road  
Elizabeth, PA 15037

and



CHARLES EFFRON  
167 Smith Street  
Poughkeepsie, NY 12601  
  
and  
  
CHAUNCEY SCRAP METALS  
107-45 Merrick Boulevard  
Jamaica, NY 11432  
  
and  
  
CLAREMONT METAL & PAPER STOCK  
2 Second Street  
Claremont, NH 03743  
  
and  
  
CLINTON METAL CO.  
7605 Ogden Drive  
Clinton, MD 20735  
  
and  
  
COATSVILLE SCRAP  
1000 S. First Avenue  
Coatsville, PA 19320  
  
and  
  
COMMERCIAL IRON & METAL CO.  
760 Paterson Avenue  
E. Rutherford, NJ 07073  
  
and  
  
CONSERVIT, INC.  
P.O. Box 1517  
Hagerstown, MD 21741  
  
and  
  
COOPER METALLURGICAL CORP.  
3560 Ridge Road  
Cleveland, OH 44102  
  
and





COUSINS METAL  
P.O. Box 400  
460 Brown Ct.  
Oceanside, NY 11572

and

CRESTWOOD METAL CORP.  
1100 Lincoln Avenue  
Holbrook, NY 11741

and

H. BIXON & SONS SCRAP & METAL  
808 Washington Avenue  
New Haven, CT 06516

and

DAVIS BROS. SCRAP CO., INC.  
Mantawny & Glasgow Streets  
Pottstown, PA 19464

and

DAVIS INDUSTRIES  
9920 Richmond Highway  
Lorton, VA 22079

and

DAVIS INDUSTRIES  
311 Sixth Street S  
P.O. Box 2944  
Arlington, VA 22202

and

ELMAN RECYCLING CO.  
920 Spencer Street  
Syracuse, NY 13204

and

EMPIRE RECYCLING CORP.  
N. Genesee & Lee Streets  
Utica, NY 13502

and



EXETER METALS CO.  
3 Jones Street  
Pittston, PA 18643

and

FRANK H. NOTT INC.  
900-1100 Brook Road  
P.O. Box 27225  
Richmond, VA 23261

and

F. SCHANERMAN  
135-39 Clinton Place  
E. Rutherford, NJ 07073

and

FAIRFIELD SCRAP CO.  
P.O. Box 679  
Bridgeport, CT 06601

and

FREDERICK JUNK CO.  
313 E. 4th Street  
Frederick, MD 21701

and

FULTON IRON & STEEL CO.  
3800 Burnet Street  
East Syracuse, NY 13057

and

CARLOMANGO G., INC.  
447 Johnston Avenue  
Jersey City, NJ 07304

and

GARBOSE METAL  
155 Mill Street  
Gardner, MA 01440

and



GELB & CO., INC.  
1521 Albright Avenue  
Scranton, PA 18509

and

GEORGE MARS MKM BUILDERS  
1039 Newton Rd.-Richboro  
Newton, PA 17075

and

GIORDANO WASTE MATERIAL CO.  
c/o Camden Recycling  
2820 Mt. Ephraim Avenue  
Camden, NJ 08104

and

GREENBLOTT METAL CO., INC.  
9 Alice Street  
Binghamton, NY 13901

and

GUTTERMAN IRON & METAL CORP.  
1206 E. Brambleton Avenue  
Norfolk, VA 23501

and

H. & D. METAL CO.  
Boundry Street  
P.O. Box 1978  
Salisbury, MD 21801

and

HARRY GOLDBERG & SONS  
Second Cor Lewis Streets  
Perth Amboy, NJ 08862

and

H. SHAKESPEARE & SONS INC.  
655 Dubois Street  
P.O. Box 705  
Dubois, PA 15801

and



LAKE ERIE RECYCLING  
127 Fillmore Avenue  
P.O. Box 1056  
Buffalo, NY 14210

and

HUDSON SCRAP CO.  
P.O. Box 923  
Albany, NY 12201

and

HURWITZ BROS. IRON & METAL CO.  
267 Marilla Street  
P.O. Box 5 - S Park Sta.  
Buffalo, NY 14220

and

I. SHULMAN & SON CO., INC.  
197 East Washington Avenue  
Elmira, NY 14902

and

I. SOLOMON METAL CO., INC.  
580 Lynnway  
Lynn, MA 01905

and

INDEPENDENT IRON & METAL  
235 East 20th Street  
Erie, PA 16503

and

INTERSTATE BURLAP & BAG CO.,  
INC.  
Box 202  
Great Bend, PA 18821

and

ITHACA SCRAP PROCESSORS  
402 3rd Street  
Ithaca, NY

and





J & J METALS INC.  
489 Frelinghuysen Avenue H  
Newark, NJ 07114

and

J. BROOMFIELD & SON, INC.  
473 Allens Avenue  
Providence, RI 02905

and

CAPITOL IRON & STEEL CO., INC.  
7th & Kelker Streets  
Harrisburg, PA 17102

and

JOSEPH FREEDMAN CO., INC.  
40 Albany Street  
Springfield, MA 01105

and

KELLEHER BATTERY  
2117 Boulevard Avenue  
Scranton, PA 18509

and

JOE KRENTZMAN & SONS  
P.O. Box 508  
R.D. 3  
Lewistown, PA 17044

and

J. SEPENUK & SONS, INC.  
21 Hyatt Avenue  
Newark, NJ 07105

and

JOSH STEEL CO.  
46 6th Street  
Braddock, PA 15104

and



JACOBSON METAL CO.  
4300 Buell Street (Money Pt.)  
P.O Box 7596 Portlock Br  
Chesapeake, VA 23324

and

ENOS METALS  
20 Dana Street  
Taunton, MA 02780

and

S. KASOWITZ & SONS INC.  
149 Front Avenue  
West Haven, CT 06516

and

KASSAB BROTHERS STEEL  
P.O. Box 251  
Blumesberg, PA 17815

and

KEARNEY SCRAP CO.  
478 Schuiler Avenue  
Kearney, NJ 07032

and

KLEIN METAL CO., INC.  
1046 University Avenue  
Rochester, NY 14610

and

KLIONSKY SCARP IRON & METAL CO.  
7 Chapin Street  
P.O. Box 385  
Seneca Falls, NY 13148

and

KREIGER WASTE  
50 Portland Avenue  
Rochester, NY 14605

and



FIEGLEMAN RECYCLING CO.  
Morgan Highway  
Scranton, PA 18508

and

LARAMI METAL CO.  
1173 Kings Mill Road  
York, PA 17403

and

CAPITOL SCRAP IRON & METALS  
Railroad Avenue  
Dover, DE 19901

and

LIBERTY IRON & METAL CO., INC.  
646 East 18th Street  
Erie, PA 16503

and

LOUIS COHEN & SON INC.  
P.O. Box 1004  
Wilkes-Barre, PA 18702

and

LOUIS KUTZ & SON  
Box 373  
Binghamton, NY 13902

and

LOUIS MACK & CO. SCRAP METAL  
750 Warren Avenue  
Portland, ME 04103

and

LUKENS METAL CO.  
Hedley & Delaware Avenue  
Philadelphia, PA 19137

and

LYELL METAL  
1515 Scottsville Road  
Rochester, NY 14623

and



M & M SCRAP METAL CO.  
Peconic Avenue  
Medford, NY 11763

and

M. HARTMAN CO.  
5629 Harrison Street  
Pittsburgh, PA 15201

and

M. LEVENSON CO., INC.  
65 Main Street  
Tuckahoe, NY 10707

and

MARLEY'S DIV. OF ABE COOPER  
320 W. Hiawatha Boulevard  
P.O. Box 67  
Syracuse, NY 13208

and

MARLEY'S DIV. OF ABE COOPER  
c/o Jordan Recycling  
P.O. Box 2526  
Liverpool, NY 13089

and

MARSON METALS INC.  
225 Pawnee Road  
Cranford, NJ 07016

and

MAXNOR METAL/M. SCHIPPER & SON  
318 Badger Avenue  
Newark, NJ 07108

and

MEYER-SABA METAL CO.  
Woodward Hill  
Edwardsville, PA 18704

and





MID-CITY SCRAP IRON  
& SALVAGE CO., INC.  
548 State Road/Route 6  
Westport, MA 02790

and

MODERN JUNK & SALVAGE CO.  
1423 North Fremont Avenue  
Baltimore, MD 21217

and

MONTGOMERY IRON & METAL CO.  
15000 Southlawn Lane  
Rockville, MD 20850

and

N. BANTIVOLGLIO SONS PAPER  
& METALS, INC.  
25 Chestnut Street  
Haddonfield, NJ 08033

and

NAPORANO IRON & METAL CO.  
Ft of Hawkins Street  
P.O. Box 5304  
Newark, NJ 07105

and

NEWBURGH SCRAP CO.  
110 Mill Street  
Newburg, NY 12250

and

NORWITZ INC.  
6000 Sandy Spring Road  
Laurel, MD 20707

and

NOVEY METAL CO.  
2 West Pine Street  
Clearfield, PA 16830

and



OLEAN STEEL SALES & SERVICE  
Corner Of East State Road  
P.O. Box 6  
Olean, NY 14760

and

P. JACOBSON, INC.  
486 Columbia Street  
Somerville, MA 02143

and

P. K. SCRAP METAL CO.  
3542 Route 112  
Coram, NY 11727

and

P. LEWIS & SONS  
604 Vanadium Road  
Bridgeville, PA 15017

and

PASCAP CO., INC.  
4250 Boston Road  
Bronx, NY 10475

and

PATCHOGUE SHEET METAL SHOP  
272 West Main Street  
Patchogue, NY 11728

and

PENN HARRIS METALS CORP.  
1605 North Cameron Avenue  
Harrisburg, PA 17103

and

AMSOURCE (PENN IRON & METAL)  
1515 East Avenue  
Erie, PA 16503

and



PENN JERSEY RUBBER & WASTE CO. :  
1112 Chestnut Street :  
Camden, NJ 08103 :

and :

PETTINELI USED AUTO PARTS :  
Iron & Metal Div. :  
Mairtin :  
Rome, NY 13440 :

and :

PHILIP MAY CO. :  
601 Capouse Avenue :  
Scranton, PA 18509 :

and :

R & R SALVAGE INC. :  
1329 William Street :  
Buffalo, NY 14206 :

and :

R. L. POETH SCRAPYARD :  
Rd. 3 :  
Lewisburg, PA 17837 :

and :

RIEGEL SCRAP & SALVAGE :  
518 Young Street :  
P.O. Box 153 :  
Havre de Grace, MD 21078 :

and :

RICHARDSON GRAPHICS :  
c/o Imperial Metal & Chemical :  
Co. :  
717 Main Street :  
Holyoke, MA 01040 :

and :

BLADENSBURG/RIVER ROAD METALS :  
CO. :  
3401 Kenilworth Avenue :  
Kenilworth Ave. & Lawrence St. :  
Bladensburg, MD 20710 :

and :



RIVERSIDE IRON & STEEL CORP.  
Railroad & Sarah Streets  
Monongahela, PA 15063

and

ROTH BROTHERS SMELTING CORP.  
6223 Thompson Road  
East Syracuse, NY 13057

and

ROTH STEEL CORPORATION  
800 Hiawatha Boulevard  
West Syracuse, NY 13204

and

S & J GENERATORS & STARTER CO.  
601 Delaware Street  
Throop, PA 18512

and

SAM KAUFMAN & SON METALS CO.  
220 Saltonstall Street  
Canandaigua, NY 14424

and

✓ SEGEL & SONS INC.  
107 S. South Street  
P.O. Box 276  
Warren, PA 16365

and

/SQUARE DEAL METAL RECYCLING  
134-01 Atlantic Avenue  
Richmond Hill, NY 11418

and

ST. MARY'S IRON & STEEL CORP.  
Rte. 33 A East  
P.O. Box 131  
St. Mary's, OH 45885

and





STATE LINE SCRAP CO., INC.	:
Bacon Street	:
P.O. Box S32	:
South Attleboro, MA 02703	:
and	:
SUISMAN & BLUMENTHAL	:
500 Flatbush Avenue	:
P.O. Box 119	:
Hartford, CT 06106	:
and	:
TIMPSON SALVAGE CO.	:
677 Timpson Place	:
Bronx, NY 10455	:
and	:
TWIN CITIES WASTE & METAL	:
Rd. 2 East Fulton Street Ext.	:
Gloversville, NY 12078	:
and	:
UNITED METAL TRADERS, INC.	:
5240 Conlyn Street	:
Philadelphia, PA 19138	:
and	:
V. VACCARO SCRAP CO.	:
43 15th Street	:
Brooklyn, NY 11215	:
and	:
WALDORF METAL CO.	:
Route 488	:
Bryantown, MD 20617	:
and	:
WALLACE STEEL INC.	:
105 Cherry Street	:
Ithaca, NY 14850	:
and	:







expended by it with respect to the property known as the Marjol Battery & Equipment Company located in the Borough of Throop, Lackawanna County, Pennsylvania ("the Marjol site") and the surrounding area. Gould also seeks a declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202, and 42 U.S.C. § 113(g)(2) declaring its right to recover past and future response costs in connection with the Marjol site and the surrounding area. Gould also asserts a claim for indemnity and contribution under Pennsylvania law for all costs it has incurred and may incur with respect to the Marjol site and the surrounding area.

#### JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613; 42 U.S.C. § 1331; and the doctrines of pendent and ancillary jurisdiction.

3. This Court has authority to issue a declaratory judgment concerning the rights and liabilities of the parties pursuant to 28 U.S.C. §§ 2201, 2202 and 42 U.S.C. § 9613(g)(2).

4. Venue is proper in the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 9613(b) because the Marjol site is located within this district and the alleged release of hazardous substances occurred in this district.



### PARTIES

5. Plaintiff Gould is a corporation in the business of electronics organized and existing under the laws of the State of Delaware with its principal place of business in Eastlake, Ohio.

6. Each defendant is found, resides in, or transacts business in the United States and is a person within the meaning of section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

### BACKGROUND

7. The Marjol site is approximately 43 acres in size and is located in the Borough of Throop, Lackawanna County, Pennsylvania.

8. From approximately 1963 to 1980, Lawrence Fiegleman owned and operated a battery crushing and lead recovery operation at the Marjol site.

9. Gould purchased the Marjol Battery & Equipment Company from Mr. Fiegleman in May 1980 and continued its operation until April 1981. From November 1981 through April 1982, Gould used the Marjol site strictly as a transfer station for batteries being shipped to other sites. In April 1982, Gould ceased all operations at the site.

10. During the operation of the Marjol site, hazardous substances, including lead, were inadvertently released into the





soils in and around the site, including the soils of neighboring residential properties.

11. In 1987, the United States Environmental Protection Agency ("EPA") performed an investigation of the levels of lead and other hazardous substances at the Marjol site and the surrounding area.

12. In April 1988, the EPA required Gould to enter into a Consent Agreement and Order to, inter alia, conduct site stabilization activities concerning lead and other hazardous substances at the Marjol site and address lead-contaminated soils on nearby residential properties ("the EPA CERCLA Order").

13. Gould has performed and fully complied with all the requirements of the EPA CERCLA Order.

14. As of the date of the filing of this complaint, Gould has incurred in excess of \$13 million in costs in connection with the performance of its obligations under the EPA CERCLA Order. Those costs were incurred by Gould consistent with the National Contingency Plan, 40 C.F.R. Part 300 (the "NCP").

15. In May 1990, the EPA required Gould to enter into a Consent Agreement and Order to undertake interim measures and a facility investigation concerning hazardous wastes allegedly found at the Marjol site ("the EPA RCRA Order").

16. Gould is now in the process of performing the actions required by the EPA RCRA Order.



17. The actions that Gould has performed thus far and the costs it has incurred in compliance with the requirements of the EPA RCRA Order have been performed and incurred consistent with the NCP. Gould will perform acts and incur costs in the future pursuant to that Order in a manner consistent with the NCP.

COUNT I (Section 107 Cost Recovery)

18. Gould incorporates by reference the allegations of paragraphs 1 through 17 as though fully set forth.

19. Under CERCLA section 107(a)(3), 42 U.S.C. § 9607(a)(3), persons who arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at a facility from which there has been a release or threatened release of a hazardous substance are liable for, inter alia, all costs of removal or remedial action incurred by any other person consistent with the NCP.

20. Defendants generated and/or possessed hazardous substances in the form of spent lead-acid batteries, or "junk" batteries, and other forms of lead-containing scrap.

21. Defendants arranged with transporters for the transport of junk batteries and other lead- and acid-containing scrap to the Marjol site for the purpose of treatment and disposal by crushing, grinding, sawing, and/or melting, including disposal of battery acid and unusable lead-contaminated portions



of the batteries and other scrap materials. Defendants also arranged for the disposal and treatment of such materials at the Marjol site.

22. Lead is a hazardous substance within the meaning of section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

23. Battery acid is a hazardous substance within the meaning of section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24. The Marjol site is a facility within the meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

25. There has been a release or threat of release of hazardous substances, including lead, from the Marjol site within the meaning of section 101(22) of CERCLA, 42 U.S.C. 9601(22).

26. Gould has incurred and will continue to incur response costs that are consistent with the NCP with respect to the Marjol site to abate the release or threatened release of hazardous substances into the environment which has occurred or may occur from the Marjol site.

27. Defendants are liable to Gould under section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for some or all of the necessary costs of response incurred or to be incurred by Gould consistent with the NCP with respect to the Marjol site.

WHEREFORE, plaintiff Gould Inc. demands judgment in its favor and against all defendants:



(1) Declaring that all defendants are liable for response costs incurred thus far by Gould which are consistent with the NCP;

(2) Declaring that all defendants are liable for future response costs Gould may incur which are consistent with the NCP;

(3) Ordering all defendants to reimburse Gould for all response costs incurred by Gould to date and all response costs Gould may incur which are consistent with the NCP;

(4) Awarding Gould its costs and attorneys' fees in this action; and

(5) Awarding Gould any other relief this Court deems appropriate.

COUNT II (Section 113 Contribution)

28. Gould incorporates by reference the allegations of paragraphs 1 through 27 as though fully set forth.

29. Pursuant to section 113(f)(i) of CERCLA, 42 U.S.C. § 9613(f)(i), any person may seek contribution from any other person who is liable or potentially liable under section 107(a) of CERCLA.

30. Gould has a right of contribution under section 113(f)(i) of CERCLA against each and every defendant named in





this complaint to recover response costs Gould has incurred and will incur regarding the Marjol site.

WHEREFORE, plaintiff Gould Inc. demands that judgment be entered in its favor and against defendants:

(1) Declaring that each defendant is liable under section 113(f)(i) of CERCLA to provide contribution to Gould for response costs Gould has incurred and will incur in connection with the Marjol site;

(2) Ordering that each defendant provide contribution, to Gould in the amounts determined by this Court to be owed to Gould for response costs incurred in connection with the Marjol site;

(3) Awarding Gould its costs and attorneys' fees in this action; and

(4) Awarding Gould any other relief this Court deems appropriate.

COUNT III (Indemnification and Contribution)

31. Gould incorporates by reference the allegations of paragraphs 1 through 30 as though fully set forth.

32. All defendants are solely liable and/or jointly and severally liable for any and all costs incurred by Gould or which will be incurred by Gould in connection with the Marjol site and are thus liable over to Gould for indemnity and/or



contribution under Pennsylvania or any other applicable state law for all sums that Gould has expended to date or will expend in the future in connection with the Marjol site.

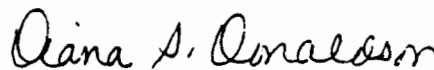
WHEREFORE, plaintiff Gould Inc. demands judgment in its favor:

(1) Declaring that each defendant is liable to indemnify Gould or to provide Gould with contribution for all costs Gould has incurred or will incur in connection with the Marjol site;

(2) Ordering each defendants to reimburse Gould by way of either indemnity or contribution for all or part of the costs Gould has incurred or will incur in connection with the Marjol site;

(3) Awarding Gould its costs and attorneys' fees in this action; and

(4) Awarding Gould any other relief this Court deems appropriate.



Dennis R. Suplee  
Barry S. Neuman  
Diana S. Donaldson  
Susan G. Caughlan

SCHNADER, HARRISON, SEGAL & LEWIS  
1600 Market Street, Suite 3600  
Philadelphia, Pennsylvania 19103

Of Counsel.

Dated: December 23, 1991



RUBIN AND SNYDER

ATTORNEYS AT LAW

22 LIGHT STREET, SUITE 400  
BALTIMORE, MARYLAND 21202

WILLIAM J. RUBIN  
STANLEY A. SNYDER

(301) 539-1700  
FAX (301) 539-1752

May 30, 1992

FEDERAL EXPRESS

Mr. Lance S. Wilson, Clerk  
United States District Court  
for the Middle District of Pennsylvania  
235 N. Washington Avenue  
P.O. Box 1148  
Scranton, Pennsylvania 18501

Re: *Gould, Inc. v. A & M Battery & Tire Service, et al.*, Civil Action No. 3:CV-91-  
1714 (M.D. Pa.) (Richard P. Conaboy)

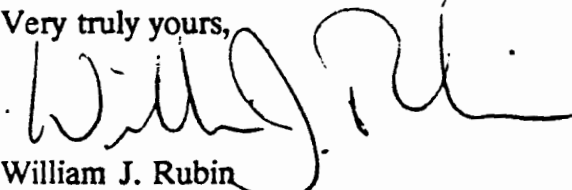
Dear Mr. Wilson:

Enclosed for filing in this case are the original and two copies of the Third-Party Complaint of Defendant, Modern Junk and Salvage Co. Please return one file-stamped copy of the Third-Party Complaint to me in the enclosed envelope.

In accordance with my conversation with your office, I also understand that you will return two summonses to us for our service upon each of the Third-Party Defendants.

Thank you for your cooperation.

Very truly yours,



William J. Rubin

WJR/bao

Enclosures



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

---

GOULD, INC.,

Plaintiff,

-against-

A & M BATTERY AND TIRE SERVICE,  
et al.,

Defendants.

---

HUDSON SCRAP METAL, INC. AND JACOB SHER

Third-party Plaintiffs,

-against-

RAY ATKINSON, BUFF & BUFF INC., BURLINGTON  
WASTE & METAL, CAPITOL BAG & WASTE CO., INC.,  
CAPITOL SCRAP METAL CO., RAY CARDAMONE, R.  
COHEN & SON OF GLENS FALLS, INC., ROBERT  
DAVIS, EASCO WAREHOUSE, FERRO SCRAP IRON &  
METAL, INC., I. FIGELMAN & SON, S. GARBOWITZ  
& SON, INC., ARNOLD GROWICK, NATHAN H. KELMAN,  
INC., NATHAN'S WASTE & PAPER STOCK CO., INC.,  
NEW YORK TELEPHONE COMPANY, ONTARIO SCRAP  
METAL INC., LOUIS PERLMAN & SONS, INC., T.A.  
PREDEL & CO., INC., SAM T. ROSEN, INC.,  
formerly known as Otsego Iron and Metal  
Corporation, VALLEY STEEL, INC., WILLIMANSETT  
WASTE CO. INC., and ZEKE'S ENTERPRISES,

Third-party Defendants.

---

Third party plaintiffs, Jacob Sher and Hudson Scrap Metal,  
Inc. (separately and hereinafter referred jointly to as "Hudson  
Scrap"), by their attorneys, McNamee, Lochner, Titus & Williams,  
P.C., as and for their third-party complaint, complain of the  
third-party defendants as follows:

THIRD PARTY COMPLAINT  
OF JACOB SHER AND  
HUDSON SCRAP METAL, INC.  
3:CV-91-1714

FILED  
SCRANTON

JAN 15 1993

PER                       
DEPUTY CLERK





1. Plaintiff has filed a second amended complaint in this proceeding against Hudson Scrap and other defendants, a copy of which is attached hereto as Exhibit "A".

2. Plaintiff in said complaint seeks declaratory and monetary relief against Hudson Scrap under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") 42 U.S.C. § 9601 et. seq., and Pennsylvania State law, all in regard to the alleged presence, storage, handling, treatment, transportation, disposal and/or release or threatened release of hazardous substances at a facility formerly operated by Marjol Battery & Equipment Company in the Borough of Throop, County of Lackawanna, State of Pennsylvania (the "Marjol Site"), which allegations have been denied and continue to be denied by Hudson Scrap.

3. Hudson Scrap brings this action pursuant the common law and Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607, 9613, to recover contribution for any costs it may have to pay in connection with the Marjol site and the surrounding area, as demanded in the complaint in this action.

#### JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to Section 113 of CERCLA, 42 U.S.C. §§ 9607, 9613 (b); 28 U.S.C. § 1331.



5. This Court has authority to issue a declaratory judgment concerning the rights and liabilities of the parties pursuant to 28 U.S.C. §§ 2201, 2202 and 42 U.S.C. § 9613 (g)(2).

6. Venue is proper in the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1391 (b) and 14 U.S.C. § 9613 (b) because the Marjol Site is located within this District, the alleged release of hazardous substances occurred in this District and Plaintiff, Gould, Inc., has commenced the action here.

7. Each third-party defendant is found, resides in, or transacts business in the United States and is a person within the meaning of Section 101 (21) of CERCLA, 42 U.S.C. § 9601 (21).

#### FIRST COUNT

8. Hudson Scrap repeats and realleges the allegations contained in paragraphs 1 through 7 hereof.

9. Upon information and belief, based upon the allegations of plaintiffs, Gould, Inc., made in the Second Amended Complaint filed in this action on or about October, 1992:

- (a) hazardous substances, including lead, were released into the environment at, around and from the Marjol site;
- (b) the release of hazardous substances into the environment at the Marjol site has caused plaintiff Gould to incur response costs and expenses.

10. Each of the third-party defendants is a person as defined by CERCLA, 42 U.S.C. §9601(21), who owned or possessed



one or more hazardous substances which was disposed of and treated at the Marjol Site.

11. Each of the third-party defendants arranged for disposal and treatment and arranged with a transporter for transport for disposal and treatment at the Marjol site of hazardous substances which each third-party defendant owned and possessed.

12. In view of the foregoing, and in the event that Hudson Scrap and/or Jacob Sher and/or Hudson Scrap Metal, Inc. are jointly or separately adjudged to be liable to plaintiff Gould, Inc. under any demand for relief in its claim, which liability has been denied and continues to be denied by Hudson Scrap, third-party defendants will be liable for indemnification of all costs of any relief imposed upon third-party plaintiffs and all damages, costs, or other monetary liability assessed against Hudson Scrap and in favor of plaintiffs or any co-defendants, or alternatively, for contribution to Hudson Scrap for third-party defendants', respective, proportionate share of such cost, damages and monetary relief, all pursuant to Hudson Scrap's right of contractual and non-contractual indemnification and contribution arising under federal and state common law and under applicable statutes, including but not limited to 42 U.S.C. §9613(f).

WHEREFORE, Hudson Scrap prays for judgment against third-party defendants as follows:



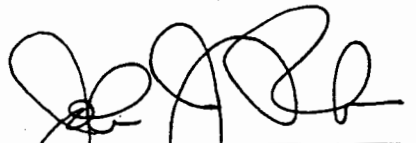
A. Declaring that each third-party defendant is liable to indemnify Hudson Scrap with contribution for all expenses, damages and costs incurred by Hudson Scrap which are in excess of Hudson Scrap's respective fairly allocated and proportionate share thereof, if any;

B. A judgment ordering each third-party defendant to reimburse Hudson Scrap by way of either indemnity or contribution for all or part of the costs Hudson Scrap has incurred or will incur in connection with the Marjol Site or the proceeding commenced by plaintiffs;

C. A judgment against each third-party defendant for all other necessary costs and expenses incurred by or assessed against Hudson Scrap, including attorneys' fees; and

D. Such other and further relief as this Court deems just and proper.

DATED: January 14, 1993



JOHN J. PRIVITERA  
MCNAMEE, LOCHNER, TITUS &  
WILLIAMS, P.C.  
75 State Street, P.O. Box 459  
Albany, New York 12201-0459  
Tel. no. (518) 447-3200  
Counsel for Jacob Sher and  
Hudson Scrap Metal, Inc.





UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

GOULD, INC.,

Plaintiff,

AFFIDAVIT OF SERVICE

-against-

A & M BATTERY & TIRE SERVICE,  
ET AL.,

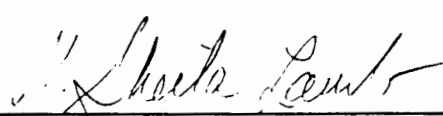
Defendants.

STATE OF NEW YORK     )  
                              ) ss.:  
COUNTY OF ALBANY     )


M. Sheila Lamb, being duly sworn, deposes and says: that she is over the age of 18 years; that on the 14th day of January, 1993 she served the within Third Party Complaint of Jacob Sher and Hudson Scrap Metal, Inc. upon the following:

Schnader, Harrison, Segal & Lewis  
Attorneys for Plaintiff  
1600 Market St., Suite 3600  
Philadelphia, PA 19103  
Attn: James H. Rodman, Jr., Esq.

by depositing a true and correct copy of the same properly enclosed in a post-paid wrapper, in the official depository maintained and exclusively controlled by the United States at 75 State Street, Albany, New York, directed to the above, at their respective addresses those being the addresses designated for that purpose upon the last papers served in this action or the place where the above then resided or kept offices, according to the best information which can be conveniently obtained.

  
\_\_\_\_\_  
M. Sheila Lamb

Sworn to before me this  
14th day of January, 1993

  
\_\_\_\_\_  
Notary Public

DIANE J. SCHROEPFER  
Notary Public, State of New York  
Qualified in Rensselaer County  
No. 4638276  
Commission Expires Feb 28 1994



MCNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.

DAVID S. WILLIAMS  
JOHN B. KINUM  
STEPHEN REYNOLDS  
THOMAS P. CONNOLLY  
WILLIAM S. HAASE  
TIMOTHY B. THORNTON  
RICHARD A. LANGER  
STANLEY A. ROSEN  
PAUL E. SCANLAN  
LORRAINE POWER THARP  
NORMAN P. FIVEL  
PETER A. PASTORE  
MARC J. LIFSET  
LESLIE E. STEIN  
SCOTT A. BARBOUR  
DAVID J. WUKITSCH  
G. KIMBALL WILLIAMS  
KATHLEEN M. FRANKLIN  
BETH DAVIES CARPINELLO

ATTORNEYS AND COUNSELORS AT LAW

75 STATE STREET

P. O. BOX 459

ALBANY, N.Y. 12201-0459

TELEPHONE (518) 447-3200

TELECOPIER (518) 426-4260

ENVIRONMENTAL COUNSEL  
JOHN J. PRIVITERA

LINDA T. TAVERNI  
BRUCE J. WAGNER  
BEVERLY T. MITCHELL  
KENNETH L. GELLHAUS  
FRANCIS J. SMITH, JR.  
JOSEPH M. GAUG  
PAUL C. PASTORE  
KEVIN LAURILLIARD  
VINCENT L. VALENZA  
JEFFREY T. CULKIN  
MICHAEL J. HALL

OF COUNSEL  
HARVEY M. LIFSET  
CHARLOTTE S. BUCHANAN

January 14, 1993

VIA FEDERAL EXPRESS

Lance Wilson, Clerk  
United States District Court  
for the Middle District of Pennsylvania  
Washington Avenue & Linden Street  
Scranton, Pennsylvania 18501

RECEIVED  
SCRANTON

JAN 15 1993

PER LANCE S. WILSON, CLERK  
DEPUTY CLERK

Re: Gould Inc. v. A & M Battery & Tire Service, et al  
C.A. No. 3: CV-91-1714

Dear Sir:

Enclosed for filing in the above-referenced matter is  
a Third Party Complaint of Jacob Sher and Hudson Scrap Metal, Inc.

Filing is timely and service is made pursuant to  
the Case Management Orders in this case and Federal Rule of Civil  
Procedure 5 (c). Therefore, the papers are served on the plaintiff  
only.

Please date stamp and return the enclosed copy of  
the Answer in the enclosed postage prepaid envelope upon receipt and  
filing of the pleading.

Please also send me 23 Summons for service.

Thank you for your assistance.

Respectfully,

John J. Privitera

JJP/gaw

Enclosure

cc: James Rodman, Esq. (via Fed X) w/enc.



# United States District Court

MIDDLE

DISTRICT OF

PENNSYLVANIA

PLAINTIFF

GOULD, INC.

## THIRD PARTY SUMMONS IN A CIVIL ACTION

V. DEFENDANT AND THIRD PARTY PLAINTIFF

HUDSON SCRAP METAL, INC.; and  
JACOB SHER

CASE NUMBER: 3:CV-91-1714  
(Judge Conaboy)

V. THIRD PARTY DEFENDANT

RAY ATKINSON; BUFF & BUFF, INC.; BURLINGTON WASTE & METAL; CAPITOL BAG & WASTE CO., INC.; CAPITOL SCRAP METAL CO.; RAY CARDAMONE; R. COHEN & SON OF GLENS FALLS, INC.; ROBERT DAVIS; EASCO WAREHOUSE; FERRO SCRAP IRON & METAL, INC.; I. FIGELMAN & SON; S. GARBOWITZ & SON, INC.; ARNOLD GROWICK; NATHAN H. KELMAN, INC.; NATHAN'S WASTE & PAPER STOCK CO., INC.; NEW YORK TELEPHONE COMPANY; ONTARIO SCRAP METAL INC.; LOUIS PERLMAN & SONS, INC.;

/ YOU ARE HEREBY SUMMONED and required to file with the Clerk of this court and serve upon /  
T.A. PREDEL & CO., INC.; SAM T. ROSEN, INC., formerly known as Otsego Iron And Metal Corporation; VALLEY STEEL, INC.; WILLIMANSETT WASTE CO., INC.; & ZEKE'S ENTERPRISES  
PLAINTIFF'S ATTORNEY (name and address) DEFENDANT AND THIRD PARTY PLAINTIFF'S ATTORNEY (name and address)

Barry S. Neuman, Esq.  
SCHNADER HARRISON SEGAL & LEWIS  
Suite 1000  
1111 19th Street, N.W.  
Washington, D.C. 20036

John J. Privitera, Esq.  
McNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.  
75 State Street  
P.O. Box 459  
Albany, NY 12201-0459

an answer to the third-party complaint which is herewith served upon you within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint. There is also served upon you herewith a copy of the complaint of the plaintiff. You have the option of answering or not answering the plaintiff's complaint, unless (1) this is a case within Rule 9(h) Federal Rules of Civil Procedure, and (2) the third-party plaintiff is demanding judgment against you in favor of the original plaintiff under the circumstances described in Rule 14(c) Federal Rules of Civil Procedure, in which situation you are required to make your defenses, if any, to the claim of plaintiff as well as to the claim of the third-party plaintiff.

LANCE S. WILSON

1/15/93

CLERK

DATE

(BY) DEPUTY CLERK



NOTICE AND ACKNOWLEDGMENT FOR SERVICE BY MAIL

Civil Action No. 3:cv-91-1714

Notice and Acknowledgment of  
Receipt of Summons and Complaint

NOTICE

To: \_\_\_\_\_  
(Insert the name and address of the person to be served)

The enclosed summons and complaint are served pursuant to Rule 4(c)(2)(C)(ii) of the Federal rules of Civil Procedure.

You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within 20 days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do not complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint was mailed on \_\_\_\_\_.  
(date)

\_\_\_\_\_  
(Date of Signature)

\_\_\_\_\_  
(Signature)

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above-captioned matter at:

\_\_\_\_\_  
(insert address where received)

\_\_\_\_\_  
(Date of Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Relationship to Entity/Authority  
to receive service of process





IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED  
SCRANTON

JAN 15 1993

PER  
DEPUTY CLERK

GOULD, INC.

Plaintiff

v.

A&M BATTERY & TIRE SERVICE, et al.  
Defendants

and

BLADENSBURG RIVER ROAD METALS  
COMPANY, INC.

Deft./Third-Party Plaintiff

v.

LARRY TEITEL

and

TFC FINANCIAL CORPORATION

and

JOHN DOE and JANE DOE

Third-Party Defendants

CIVIL ACTION

NO. 3:CV-91-1714

(Senior Judge  
Richard P. Conaboy)

**THIRD-PARTY COMPLAINT OF DEFENDANT/THIRD-PARTY  
PLAINTIFF, BLADENSBURG RIVER ROAD METALS COMPANY,  
INC., AGAINST THIRD-PARTY DEFENDANTS, LARRY TEITEL,  
AND TFC FINANCIAL CORPORATION, AND JOHN DOE AND JANE DOE**

1. Defendant/third-party plaintiff, Bladensburg River Road Metals Company, Inc. ("Bladensburg"), brings this action pursuant to Section 113 of the Comprehensive Environmental Compensation, Response and Liability Act ("CERCLA"), as amended, 42 U.S.C. §9613 to recover response costs it has incurred and may incur with respect to the Marjol Site and surrounding area. Bladensburg also seeks a declaratory judgment pursuant to 28 U.S.C. §§2201, 2202, and 42 U.S.C. § 113(g)(2) declaring its right to recover past and future response costs in connection with the Marjol Site and surrounding area. Bladensburg also asserts a claim



for indemnity and contribution under Pennsylvania law and common law for all costs it has incurred and may incur with respect to the Marjol Site and the surrounding area.

#### JURISDICTION AND VENUE

2. This court has jurisdiction over this action pursuant to Section 113 of CERCLA, 42 U.S.C. §9613; 28 U.S.C. §1331; and the doctrines of pendant and ancillary jurisdiction.

3. This court has authority to issue a declaratory judgment concerning the rights and liabilities of the parties pursuant to 28 U.S.C. §§2201, 2202 and 42 U.S.C. §9613(g)(2).

4. Venue is proper in the Middle District of Pennsylvania pursuant to 28 U.S.C. §1391(b) and 42 U.S.C. §9613(b) because the Marjol Site is located within this district and the alleged release of hazardous substances occurred in this district.

#### BACKGROUND

5. Plaintiff, Gould Inc., has filed a private cost recovery action pursuant to Sections 107 and 113 of CERCLA to recover response costs expended by it with respect to the property known as the Marjol Battery and Equipment Company located in Lackawanna County, Pennsylvania and the surrounding area ("Marjol Site"). Plaintiff also seeks a declaratory judgment declaring its right to recover past and future response costs in connection with the Marjol Site.



6. Gould has named Bladensburg, among other parties, as being potentially liable to Gould to reimburse it for past and future response costs expended with respect to the Marjol Site.

7. Bladensburg denies, and continues to deny, any and all liability to Gould with respect to the allegations set forth in Gould's Second Amended Complaint filed on or about October 16, 1992.

8. In Gould's Second Amended Complaint, it alleges that it has incurred in excess of \$17.5 million in costs in connection with the performance of its obligations under a CERCLA Order issued by the EPA and that those costs were incurred by Gould consistent with the National Contingency Plan, 40 C.F.R. Part 300.

9. Gould alleges that it has incurred costs in excess of \$1 million pursuant to a Consent Decree entered into between Gould and the EPA pursuant to Section 3008(h) of the Resource Conservation and Recovery Act, 42 U.S.C. §6928(h).

10. Gould seeks reimbursement of the aforementioned costs, and costs to be incurred in the future, from Bladensburg and other defendants named in the Second Amended Complaint.

#### PARTIES

11. Third-party plaintiff, Bladensburg, is a corporation that has been sued by plaintiff in an action seeking alleged response costs related to the Marjol Site. Bladensburg is a Maryland corporation, formed on December 11, 1985, commencing



business on January 1, 1986, located at 3401 Kennilworth Avenue, Bladensburg, Maryland 20710.

12. Third-party defendant, Larry Teitel, is an individual who, by contract, agreement or otherwise, arranged for, or arranged with a transporter for, the disposal and/or treatment of hazardous substances, owned or possessed by Larry Teitel, or owned or possessed by corporations that he controlled or directed, at the Marjol Site. Mr. Teitel also had the capacity and authority to control the sales of used or spent lead-acid batteries which were sent to the Marjol Site. Larry Teitel resides at 10120, Sorrel Avenue, Potomac, Maryland 20854.

13. Third-party defendant, TFC Financial Corporation was previously known as Teitel Financial Corporation. Third-party defendant, TFC Financial Corporation is a Maryland corporation. Third-party defendant, TFC Financial Corporation, is located at 5000 Sunnyside Avenue, Beltsville, Maryland 20705. Teitel Financial Corporation and TFC Financial Corporation were at all times owned and operated by third-party defendant, Larry Teitel. Teitel Financial Corporation, now known as TFC Financial Corporation, received the proceeds from the sale of assets, owned by Bladensburg Metals, Inc.; River Road Iron & Metal Co., Inc.; and River Road Products, Inc., on or about December 31, 1985.

14. John and/or Jane Doe are persons who, upon information and belief, received proceeds derived as a result of the purchase of assets made by Bladensburg of Bladensburg Metals,





Inc.; River Road Iron & Metal Co., Inc.; and River Road Products, Inc., on or about December 31, 1985.

COUNT I  
(Contribution Under Section 113 of CERCLA)

15. Bladensburg incorporates by reference the allegations of Paragraphs 1 through 14 as though fully set forth.

16. At all times relevant to this Third-Party Complaint, third-party defendant, Larry Teitel, was the Secretary and Treasurer, shareholder, and member of the Board of Directors of River Road Iron & Metal Co., Inc. and Bladensburg Metals, Inc., and President, shareholder, and member of the Board of Directors of River Road Products, Inc.

17. Larry Teitel was an owner and operator of River Road Iron & Metal Co., Inc., Bladensburg Metals, Inc., and River Road Products, Inc.

18. Larry Teitel was responsible for, and had ultimate authority, with respect to the daily operations of River Road Iron & Metal Co., Inc., Bladensburg Metals, Inc., and River Road Products, Inc.

19. Larry Teitel had the responsibility, and ultimate authority, with respect to the selection and continued business relationships of River Road Iron & Metal Co., Inc. and its customers, including Marjol Battery and Equipment Company.

20. Between 1972 and 1980, River Road Iron & Metal Co., Inc. sold used or spent lead-acid batteries to the Marjol Battery and Equipment Company.



21. The used batteries sold by River Road Iron & Metal Co., Inc. to Marjol Battery and Equipment Company were purchased by River Road Iron & Metal Co., Inc. and/or Bladensburg Metals, Inc. and/or River Road Products, Inc.

22. During the period of time set forth in Paragraph 20, Larry Teitel directed the operations of River Road Iron & Metal Co., Inc., Bladensburg Metals, Inc., and River Road Products, Inc., and was responsible for their business practices, and the actions of its employees.

23. Plaintiff alleges that spent lead-acid batteries sold by River Road Iron & Metal Co., Inc. to Marjol, resulted in the contamination of the Marjol Site by lead and battery acid.

24. Lead is a hazardous substance within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

25. Battery acid is a hazardous substance within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

26. The Marjol Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

27. Each third-party defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

28. Plaintiff alleges there has been a release or threat of release of hazardous substances, including lead, from the Marjol Site within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

29. As an owner, operator, shareholder, director, Secretary and Treasurer of River Road Iron & Metal Co., Inc.,



third-party defendant, Larry Teitel was directly responsible for arranging for the disposal and/or treatment and/or the transport of hazardous substances, owned or possessed by River Road Iron & Metal Co., Inc., to the Marjol Site.

30. By virtue of the authority and control vested in Larry Teitel, he had the duty, capacity, authority and responsibility concerning all business practices undertaken by River Road Iron & Metal Co., Inc., Bladensburg Metals, Inc., and River Road Products, Inc., including the practice, method and manner of the purchase and sale of used or spent lead-acid batteries.

31. By virtue of the authority and control vested in him, Larry Teitel had the duty, responsibility, and capacity to prevent and abate the damage allegedly caused by the transport, disposal or treatment of hazardous substances at the Marjol Site allegedly caused by the aforementioned business practices of River Road Iron & Metal Co., Inc., Bladensburg Metals, Inc., and River Road Products, Inc.

32. Pursuant to Section 113(f) of CERCLA, 42 U.S.C. §9613(f), any person may seek contribution from any other person who is liable or potentially liable under Section 107(a) of CERCLA.

33. Third-party plaintiff, Bladensburg, has the right of contribution under Section 113(f) of CERCLA against third-party defendant, Larry Teitel, to the full extent that third-party plaintiff is found liable to plaintiff, Gould, in any amount, with



respect to plaintiff Gould's allegations as set forth in its Second Amended Complaint.

34. Third-party defendant, TFC Financial Corporation, when known as Teitel Financial Corporation, received the proceeds from the sale of assets of River Road Iron & Metal Co., Inc., Bladensburg Metals, Inc., and River Road Products, Inc., on or about December 31, 1985.

35. River Road Iron & Metal Co., Inc. and Bladensburg Metals, Inc., Delaware corporations, allowed their Charters to lapse on or about 1987. River Road Products, Inc. is a Maryland corporation, still in good standing.

36. As the entity which received the assets, in the form of a cash (by check) purchase, TFC Financial Corporation (as successor to Teitel Financial Corporation) remains legally and financially liable for all acts or omissions of River Road Iron & Metal Co., Inc., Bladensburg Metals, Inc., and River Road Products, Inc.

37. Third-party defendants, Jane Doe and John Doe, as persons which received proceeds, in the form of a cash (by check) purchase, remain legally and financially liable for all acts or omissions of River Road Iron & Metal Co., Inc., Bladensburg Metals, Inc., and River Road Products, Inc.

WHEREFORE, third-party plaintiff, Bladensburg, demands judgment in its favor and against all third-party defendants:

(i) declaring that each third-party defendant is liable under Section 113(f) of CERCLA to provide contribution to





Bladensburg for any response costs it has incurred, or which will be incurred, in connection with the Marjol Site;

(ii) declaring that each third-party defendant provide contribution to Bladensburg in the full amount, if any, should this court determine that Bladensburg owes Gould for response costs in connection with the Marjol Site;

(iii) awarding Bladensburg its enforcement costs and other costs and attorneys' fees in this action; and

(iv) awarding Bladensburg any other relief this court deems appropriate.

**COUNT II**  
**(Declaratory Judgment)**

38. Third-party plaintiff incorporates by reference Paragraphs 1 through 37 as though fully set forth.

39. Plaintiff, Gould, seeks a declaratory judgment under Section 107 and 113 of CERCLA in favor of it and against Bladensburg and all other defendants, jointly and severally, for all costs incurred and to be incurred by plaintiff in connection with the Marjol Site.

40. If third-party plaintiff is declared liable for past and/or future response costs, then third-party plaintiff is entitled, pursuant to Section 113 of CERCLA, and 28 U.S.C. §§2201, 2202, to a declaratory judgment declaring that the third-party defendants are similarly liable to third-party plaintiff and/or plaintiff for all such past and/or future response costs in the full amount of any liability assessed against Bladensburg.



WHEREFORE, third-party plaintiff, Bladensburg, demands judgment in its favor and against all third-party defendants:

(i) declaring an award of contribution to third-party plaintiff in an amount equal to all amounts which third-party plaintiff may be obligated to pay to plaintiff, Gould;

(ii) declaring judgment in the favor of third-party plaintiff and against third-party defendants, that third-party defendants are liable for the costs of any past and future actions taken by plaintiff, Gould, at the Marjol Site;

(iii) awarding Bladensburg its enforcement costs and other costs and attorneys' fees in this action; and

(iv) awarding Bladensburg any other relief this court deems appropriate.

**COUNT III**  
**(Indemnification and Contribution)**

41. Third-party plaintiff, Bladensburg, incorporates by reference the allegations in Paragraphs 1 through 40 as though fully set forth.

42. Third-party defendants are solely liable and/or jointly and severally liable for any and all costs incurred by Bladensburg, or which will be incurred by Bladensburg, in connection with the Marjol Site and are thus liable over to Bladensburg for indemnity and/or contribution under Pennsylvania law or common law for all sums that Bladensburg has expended to date or will expend in the future in connection with the Marjol Site.



WHEREFORE, third-party plaintiff, Bladensburg, demands judgment in its favor and against all third-party defendants:

(i) declaring each third-party defendant liable to indemnify Bladensburg, or to provide Bladensburg with contribution, for all costs Bladensburg has incurred or will incur in connection with the Marjol Site;

(ii) ordering all third-party defendants to reimburse Bladensburg, by way of either indemnity or contribution, for all of the costs Bladensburg has incurred or will incur in connection with the Marjol Site;

(iii) awarding Bladensburg its enforcement costs and other costs and attorneys' fees in this action; and

(iv) awarding Bladensburg any other relief this court deems appropriate.

MARGOLIS, EDELSTEIN & SCHERLIS

By: 

Mark N. Cohen, Esquire  
Attorney I.D. No. 17896  
The Curtis Center, Suite 400  
Independence Square West  
Philadelphia PA 19106  
(215)931-5848

Attorney for Defendant/Third-  
Party Plaintiff, Bladensburg  
River Road Metals Company, Inc.



# United States District Court

MIDDLE

DISTRICT OF

PENNSYLVANIA

PLAINTIFF

GOULD, INC.

V. DEFENDANT AND THIRD PARTY PLAINTIFF

BLADENSBURG RIVER ROAD METALS  
COMPANY, INC.

## THIRD PARTY SUMMONS IN A CIVIL ACTION

CASE NUMBER: 3:CV-91-1714

(Judge Conaboy)

V. THIRD PARTY DEFENDANT

LARRY TEITEL;  
TFC FINANCIAL CORPORATION;  
JOHN DOE; and JANE DOE

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Barry S. Neuman, Esq.  
SCHNADER HARRISON SEGAL & LEWIS  
Suite 1000  
1111 19th Street, N.W.  
Washington, D.C. 20036

DEFENDANT AND THIRD-PARTY PLAINTIFF'S ATTORNEY  
(name and address)

Mark N. Cohen, Esq.  
MARGOLIS EDELSTEIN & SCHERLIS  
The Curtis Center - Suite 400  
Independence Square west  
Phila., PA 19106

an answer to the third-party complaint which is herewith served upon you within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint. There is also served upon you herewith a copy of the complaint of the plaintiff. You have the option of answering or not answering the plaintiff's complaint, *unless* (1) this is a case within Rule 9(h) Federal Rules of Civil Procedure, and (2) the third-party plaintiff is demanding judgment against *you* in favor of the original plaintiff under the circumstances described in Rule 14(c) Federal Rules of Civil Procedure, in which situation you are required to make your defenses, if any, to the claim of plaintiff as well as to the claim of the third-party plaintiff.

LANCE S. WILSON

1/15/93

CLERK

DATE

(BY) DEPUTY CLERK





NOTICE AND ACKNOWLEDGMENT FOR SERVICE BY MAIL

Civil Action No. 3:04-91-1714

Notice and Acknowledgment of  
Receipt of Summons and Complaint

NOTICE

To: \_\_\_\_\_  
(Insert the name and address of the person to be served)

The enclosed summons and complaint are served pursuant to Rule 4(c)(2)(C)(ii) of the Federal rules of Civil Procedure.

You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within 20 days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do not complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint was mailed on \_\_\_\_\_.  
(date)

\_\_\_\_\_  
(Date of Signature)

\_\_\_\_\_  
(Signature)

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above-captioned matter at:

\_\_\_\_\_  
(insert address where received)

\_\_\_\_\_  
(Date of Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Relationship to Entity/Authority  
to receive service of process



January 14, 1993

OUR FILE

41146.0-0001

FEDERAL EXPRESS

Donald R. Berry, Clerk  
UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF  
PENNSYLVANIA  
Federal Building, Room 421  
Washington Avenue and Linden Street  
Scranton, Pennsylvania 18501

RECEIVED  
SCRANTON

JAN 15 1993

Per LANCE S. WILSON, CLERK  
DEPUTY CLERK

Re: Gould, Inc. v. A&M Battery & Tire  
Service, et al.  
U.S.D.C. M.D.Pa. No. 3:CV-91-1714

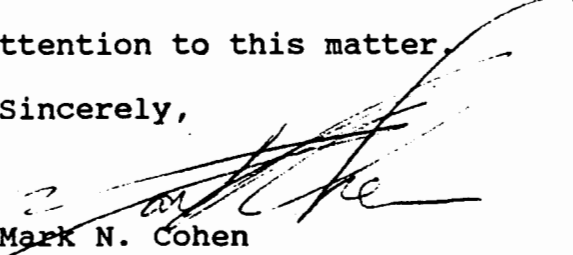
Dear Mr. Berry:

Enclosed please find the Third-Party Complaint of Defendant/Third-Party Plaintiff, Bladensburg River Road Metals Company, Inc., Against Additional Defendants, to be filed of record in the referenced matter, as well as a copy of the cover page of same.

Kindly file the original pleading of record and time-stamp and return the copy to me in the enclosed self-addressed, stamped envelope provided.

Thank you for your attention to this matter.

Sincerely,

  
Mark N. Cohen

MNC/peg

Enclosures



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GOULD, INC.,

Plaintiff

v.

A & M BATTERY & TIRE SERVICE,  
UNITED METAL TRADERS, INC., et al.,

Defendants

3:CV-91-1714

(CHIEF JUDGE CONABOY)

\*\*\*\*\*

ABE COOPER SYRACUSE,  
ABE E. NATHAN SONS,  
A. ALLAN INDUSTRIES, INC., T/A  
ALLAN INDUSTRIES,  
AMSOURCE (PENN IRON & METAL),  
ANNADALE SCRAP COMPANY,  
BARNEY SNYDER, INC.,  
BROOKFIELD AUTO WRECKERS, INC.,  
A/K/A BROOKFIELD METAL CO.,  
CAPITOL IRON & STEEL CO., INC.,  
CAPITOL SCRAP IRON & METALS, INC.,  
CHARLES BLUESTONE COMPANY,  
COATESVILLE SCRAP IRON & METAL CO.,  
INC., COLONIAL METALS, CONSERVIT, INC.,  
CRESTWOOD METAL CORP.,  
D. KATZ & SONS, INC.,  
DAVIS INDUSTRIES, INC.,  
DECKER BROTHERS,  
EMPIRE RECYCLING CORP.,  
FRANCIS WHITE SCRAP IRON & METAL,  
GARBOSE METAL COMPANY,  
GUTTERMAN IRON & METAL CORP.,  
H. BIXON & SONS SCRAP & METAL,

FILED  
SCRANTON

MAY 31 1994

PER

DEPUTY CLERK



H. & D. METAL COMPANY, INC.,  
HUDSON SCRAP METAL, INC.,  
I. SHULMAN & SON CO., INC.,  
I. SOLOMON METAL CO., INC.,  
ITHACA SCRAP PROCESSORS,  
J.C. PENNEY COMPANY, INC.,  
J. SEPENUK & SONS, INC.,  
JOSH STEEL CO.,  
K-MART CORPORATION,  
LIBERTY IRON & METAL CO., INC.,  
LONI-JO METAL CORPORATION,  
LOUIS COHEN & SON, INC.,  
LOUIS KUTZ & SON, M.H. BRENNER'S, INC.,  
M & M SCRAP CORPORATION,  
MONTGOMERY IRON & METAL CO.,  
NAPORANO IRON & METAL CO.,  
NOTT ENTERPRISES, INC., F/K/A  
FRANK H. NOTT, INC.,  
P. JACOBSON, INC.,  
P.K. SCRAP METAL,  
PASCAP CO., INC.,  
PENN HARRIS METALS CORP.,  
RIEGEL SCRAP & SALVAGE,  
S. KASOWITZ & SONS, INC.,  
SAM KAUFMAN & SON METAL CO.,  
SONE' ALLOYS INC., D/B/A ENOS METALS,  
SQUARE DEAL METAL RECYCLING,  
STATE LINE SCRAP CO., INC.,  
TIMPSON SALVAGE CO.,  
UNITED HOLDINGS CO., INC., A/K/A  
UNITED IRON & METAL COMPANY, INC.,  
UNITED METAL TRADERS, INC.,  
UNIVERSAL WASTE, INC.,  
WALLACE STEEL, INC.,  
WEINER IRON & METAL CORP.,  
WILLIAM F. SULLIVAN CO., INC.,  
WIMCO METALS, INC.,  
ZUCKERMAN COMPANY, INC.,

Defendants and  
Third Party Plaintiffs

vs.

LAWRENCE FIEGLEMAN, JOSEPH FIEGLEMAN,  
MARC A. ROBIN, ANTHONY BONADIO,  
JOHN DeLEO, JOSEPH STRAUB,  
ROBERT McANDREW, and  
WILLIAM SULLENBERGER,

Third Party Defendants

THIRD PARTY COMPLAINT OF JOINT DEFENSE GROUP





Pursuant to Federal Rule of Civil Procedure 14, Defendants and Third Party Plaintiffs, the members of the Joint Defense Group ("JDG"), through their attorneys, Rosenn, Jenkins & Greenwald, complain of the Third Party Defendants as follows:

1. The members of the JDG, with the exception of LONI-JO METAL CORPORATION, are listed in the Sixth Amended Praecipe for Entry of Appearance on Behalf of Joint Defense Group, a true and correct copy of which is attached as Exhibit "A" and incorporated by reference.

2. Plaintiff, GOULD, INC., has filed a Third Amended Complaint in this proceeding against the JDG and other defendants, a copy of which is attached as Exhibit "B."

3. Plaintiff's Third Amended Complaint seeks declaratory and monetary relief against the JDG under provisions of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., and Pennsylvania state law, all in regard to the alleged presence, storage, handling, treatment, transportation, disposal and/or release or threatened release of hazardous substances at a facility formerly operated by Marjol Battery & Equipment Company in the Borough of Throop, Lackawanna County, Pennsylvania ("the Site").

4. The JDG brings this action pursuant to the common law and Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, to recover indemnification, subrogation, and contribution for any costs it may have to pay in connection with the Site and the surrounding area, as demanded in Plaintiff's Third Amended Complaint.



### JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 42 U.S.C. §§ 9607 and 9613(b); 28 U.S.C. § 1331; and the principles of ancillary and pendent jurisdiction.

6. This Court has authority to issue a declaratory judgment concerning the rights and liabilities of the parties pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 9613(g)(2).

7. Venue is proper in the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 9613(b) because the Site is located within the District, the alleged release of hazardous substances occurred in the District and Plaintiff commenced the action in the District.

8. Each Third Party Defendant is found in, resides in, or transacts business in the United States and is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

### COUNT I

9. Paragraphs 1 through 8 above are incorporated by reference.

10. Plaintiff's Third Amended Complaint alleges that:

(a) hazardous substances, including lead, were released into the environment at, around and from the Site;

(b) the release of hazardous substances into the environment at the Site has caused Plaintiff to incur response costs and expenses.

11. Each of the Third Party Defendants is a person, as defined by CERCLA, 42 U.S.C. § 9601(21), alleged to have owned or possessed one or more hazardous substances disposed of and treated at the Site.



12. Third Party Defendant, LAWRENCE FIEGLEMAN, was the President and sole shareholder of Marjol Battery & Equipment Company, which owned and operated the Site and which sold the Site to Plaintiff. During the period prior to the sale to Plaintiff, FIEGLEMAN was the owner and operator of the facility and is a "covered person" pursuant to 42 U.S.C. § 9607(a).

13. Upon information and belief, Third Party Defendant, ANTHONY BONADIO, was the General Manager of the facility prior to its sale to Plaintiff and was responsible for site operations and the purchase and disposition of batteries disposed of and treated at the Site and is a "covered person" pursuant to 42 U.S.C. § 9607(a).

14. Upon information and belief, Third Party Defendant, JOSEPH FIEGLEMAN, was an employee of the facility prior to its sale to Plaintiff and was responsible for site operations and the purchase and disposition of batteries disposed of and treated at the Site and is a "covered person" pursuant to 42 U.S.C. § 9607(a).

15. Upon information and belief, Third Party Defendant, MARC A. ROBIN, transported and/or arranged for the disposition of hazardous substances to the Site for disposal or treatment and hired independent transporters to transport hazardous substances for disposal or treatment at the Site. Accordingly, ROBIN is a "covered person" pursuant to 42 U.S.C. § 9607(a).

16. Upon information and belief, Third Party Defendant, JOSEPH STRAUB, transported and/or arranged for the disposition of hazardous substances to the Site for disposal or treatment and is a "covered person" pursuant to 42 U.S.C. § 9607(a).



17. Upon information and belief, Third Party Defendants, WILLIAM SULLENBERGER, JOHN DeLEO and ROBERT McANDREW, processed, treated, disposed of and/or arranged for the disposition of hazardous substances at the facility and are "covered persons" pursuant to 42 U.S.C. § 9607(a).

18. As a result of the above, if the members of the JDG are jointly or separately adjudged to be liable to Plaintiff under any demand for relief in Plaintiff's claim, the Third Party Defendants are liable for indemnification of all costs of any relief imposed upon the JDG and all damages, costs or other monetary liability assessed against the JDG and in favor of Plaintiff or any Co-Defendants, or alternatively, for contribution to the JDG for the Third Party Defendants' respective, proportionate share of such costs, damages and monetary relief, all pursuant to the JDG's right of indemnification, subrogation, and contribution under state and federal common law and under applicable statutes, including but not limited to 42 U.S.C. §§ 9607 and 9613(f).

WHEREFORE, the members of the JDG demand judgment in their favor and against the Third Party Defendants as follows:

- (1) a declaration that each Third Party Defendant is liable to indemnify the JDG with contribution for all expenses, damages and costs incurred by the JDG in excess of the members' respective proportionate share thereof, if any;
- (2) a judgment ordering each Third Party Defendant to reimburse the JDG by either indemnity or contribution and subrogation for all or part of the costs the JDG has incurred or will in the future incur in connection with the Site or the claims brought by Plaintiff;
- (3) a judgment against each Third Party Defendant for all necessary costs and expenses incurred by or assessed against the JDG, including but not limited to attorneys' fees;





- (4) such other and further relief as this Honorable Court deems just and proper.

ROSENN, JENKINS & GREENWALD

BY: Robert N. Gawlas, Jr.

DONALD H. BROBST, ESQUIRE  
ROBERT N. GAWLAS, JR., ESQUIRE  
15 South Franklin Street  
Wilkes-Barre, PA 18711  
(717) 826-5600

Attorneys for Defendants,  
JOINT DEFENSE GROUP

Additional Counsel for Joint Defense Group  
RICHARD H. FRIEDMAN, ESQUIRE  
BUCHANAN INGERSOLL, P.C.  
30 North Third Street - Eighth Floor  
Harrisburg, PA 17101-2023  
(719) 237-4850



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED  
SCRANTON

GOULD INC.,

:

Plaintiff

:

SEP 14 1995

v.

: 3 CV-91-1714 PER

DEPUTY CLERK

A&M BATTERY AND  
TIRE SERVICE, et al.,

:

Defendants

MEMORANDUM AND ORDER

Presently before the Court is a Motion for Partial Summary Judgment filed on behalf of two of the defense groups in the above-captioned action. The motioning defense groups are the Marjol Site PRP Group and the Rosenn Jenkins Joint Defense Group.<sup>1</sup> In its motion, the moving defense groups ask this Court to disallow Plaintiff Gould from bringing a cost recovery action under §107 of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9607 (hereinafter "§107"). The moving Defendants contend that, as a matter of law under the facts set forth in Gould's own Amended Complaint, Gould's only action is one for contribution under 42 U.S.C. §9613 (hereinafter "§113").

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1. The Micro Defense Group has joined in the motion and corresponding memorandum of law filed by the PRP Group and the Rosenn Jenkins Joint Defense Group. The Micro Defense Group's Motion and Brief in Support are found in Docket Number 792 and Docket Number 793 respectively.



Plaintiff Gould, by way of its Third Amended Complaint, has brought an action against the Defendants under both Section 107 and Section 113 of CERCLA. Under its §107 count, Gould asserts that liability should be joint and several against all of the various Defendants. Moving Defendants aver that Gould's only action is limited to a §113 contribution action and therefore pursuant to §113's provisions, liability among the Defendants will be several, not joint and several. Furthermore, Defendants contend that if the various Defendants can only be severally liable, then the so called "orphan share"<sup>2</sup> must be borne by Plaintiff Gould.

Finally, Defendants state that if this action is styled as a §113 contribution action Plaintiff Gould's claim for past cost is time barred by the three-year statute of limitations under 42 U.S.C. §9613(g)(3) (hereinafter §113(g)(3)).

As noted above, Plaintiff Gould has asserted a cause of action under both Section 107 and Section 113 of CERCLA. The statute of limitations for a §107 cost recovery action is contained in §113(g)(2) of CERCLA (42 U.S.C. §9613(g)(2)), while the statute of limitations for a §113 contribution action is found in §113(g)(3) of CERCLA (42 U.S.C. §9613(g)(3)).

For the reasons which follow, this Court holds that Plaintiff Gould's action is in the nature of a §113 contribution

---

2. The term "orphan shares" as used throughout our opinion, refers to the percentage of the harm at the former Marjol Site that was caused by parties other than Plaintiff Gould or any of the numerous Defendants.



action. As such, Defendants can only be severally liable for their proportionate share of the harm caused at the Marjol site. Furthermore, since liability under a §113 contribution action is several, Defendants are not responsible to Gould for the "orphan shares". The Court takes notice of Gould's argument that it would be inequitable to hold Gould solely accountable for the "orphan shares". However, this argument is misplaced based in part on Gould's own waste-in-list. This list clearly shows how much each Defendant contributed to the harm and the resultant liability accorded to each Defendant. Since liability under a section 113 contribution action is several, Defendants are only liable for their share of the harm caused. The waste-in-list provides an accurate method for this Court to determine each Defendant's share of responsibility. Contrary to Gould's argument, it would be inequitable for us to hold Defendants liable for any harm related to the "orphan shares" when this harm was clearly caused by entities other than Defendants.

Finally, we agree with the Defendants that §113(g)(3) is the applicable statute of limitations governing a contribution action. However, Defendants argument that Gould is time barred is incorrect. As will be discussed, §113(g)(3) requires one of four triggering events to occur in order to start the running of the three-year limitation period. Gould's consent order with the Environmental Protection Agency (EPA) is in no way equivalent to one of the four triggering events of §113(g)(3) and therefore, Gould's action is not time barred.





### STATEMENT OF FACTS

In December 1991, Plaintiff Gould initiated this action by filing a complaint against various Defendants seeking recovery pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, et seq., for costs incurred and to be incurred to cleanup contamination at the "Marjol Site" located in the Borough of Throop, Lackawanna County, Pennsylvania.

Marjol Battery & Equipment Company operated a battery-breaking operation in Throop, Pennsylvania from 1963 until May 1980 when Gould acquired the stock of the company. Gould operated the battery-breaking operations until April 1981 when it shut down its battery-breaking operations.

In September, 1982, the Pennsylvania Department of Environmental Resources ("DER") advised Gould that no remediation would be necessary and no enforcement actions would be taken at the site unless battery-breaking operations resumed. However, the EPA began investigating the Marjol Site in 1987 and after performing preliminary tests, concluded that there may be "an imminent and substantial endangerment to the public health, welfare or the environment."

In April, 1988, the EPA and Gould entered into a Consent Agreement and Order pursuant to §106(a) of CERCLA, 42 U.S.C. §9606(a), to conduct site stabilization activities concerning lead and other hazardous substances at the Marjol Site and other residential properties.



lead and other hazardous substances at the Marjol Site and other residential properties.

In May, 1990, Gould entered into a second consent order, this one with both the EPA and DER. This order was based on the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6928(h). Pursuant to this second consent order, Gould agreed to perform a RCRA Facility Investigation and Corrective Measure Study ("CMS") at the Marjol Site. EPA is currently evaluating Gould's CMS, and will ultimately select a final remedy for the Marjol Site.

Gould initiated the above-captioned matter as a cost recovery action pursuant to §107 (a)(4)(B) of CERCLA and, in the alternative, a contribution action pursuant to §113(f) of CERCLA. On June 8, 1995, this Court entered Case Management Order No. 5 ("CMO No. 5"). The parties were directed to address the question of whether Gould can bring a §107 cost recovery action or whether Gould is limited to a §113 contribution action. The determination of which section(s) Gould can proceed under also affect the issue of who is responsible for the "orphan shares" and the corresponding statute of limitations for section 107 and section 113. The parties have adhered to "CMO No. 5" and the issue concerning whether the action is a §107 cost recovery action or a §113 contribution action is now ripe for adjudication.



## DISCUSSION

### Nature of Action

Defendants' motion for partial summary judgment is brought pursuant to Federal Rule of Civil Procedure 56(c). A party is entitled to summary judgment where:

the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c); see Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

The issue addressed in Defendants' motion is purely one of law. Gould has asserted a cost recovery action under §107 of CERCLA or in the alternative a contribution action under §113 of CERCLA. The issue before this Court is whether Gould can maintain both actions or are they limited to bringing a §113 contribution action.

### CERCLA

Section 107(a) of CERCLA imposes liability on four classes of potentially responsible parties ("PRPs"): (1) the owner and operator of the facility; (2) any person who owned or operated the facility at the time of disposal of any hazardous substance; (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment of hazardous substances owned or possessed by that person; and (4) any person who accepted any hazardous substances for the transport to disposal or treatment sites selected by that person. 42 U.S.C. §9607(a)(1)-(4).



Section 113(f)(1) of CERCLA states, "[A]ny person may seek contribution from any other person who is liable or potentially liable under section 9607(a) of this title, during or following any civil action under section 9606 of this title or under section 9607(a) of this title.... In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate."

Plaintiff Gould has asserted in its Complaint that it has a private right of action under §107 for "cost recovery" that is, distinct from its claim for "contribution" under §113. However, this Court favors the view that CERCLA §113 was enacted to confirm that responsible parties who resolve their liability to the government for a cleanup may bring an action against other allegedly responsible parties for contribution. The §106 consent agreement in April, 1988, between Plaintiff Gould and the EPA is a primary example of a responsible party, in this case Plaintiff Gould, resolving their liability to the government for the cleanup of a contaminated site. We find that Gould's action to recover its equitable share of its response costs is a section 113 contribution action. This finding is in accord with the various circuits that have addressed this issue. Plaintiff Gould has taken the position that the Third Circuit allows a private responsible party to bring a cost recovery action under §107 where that party has remediated a site. However, the Third Circuit cases cited by Gould are inapplicable to the present





action and do not stand for the proposition that private responsible parties can bring a §107 cost recovery action.

#### Third Circuit Decisions

The issue presently before this Court has not been directly ruled upon by the Third Circuit and as such, we are not bound by precedent. The Third Circuit has implicitly accepted the position of the various circuits that a cost recovery claim by a private PRP is a claim for contribution under §113 of CERCLA. In Smith Land & Improvement Corp. v. Celotex Corp., 851 F. 2d 86 (3rd Cir. 1988), cert. denied, 488 U.S. 1029 (1989), a case originally brought in this Court, the EPA informed the site owner that unless it remediated the site, EPA would perform the work and seek recovery of its costs. The owner of the site settled with EPA and incurred costs cleaning the site. The owner then brought an action against the prior owner of the site under §107 to recover those costs.

While not directly holding the action to be a §113 contribution action, the Third Circuit held, among other things, that in the context of a private CERCLA claim, the three defenses listed in §107(b) are not exclusive and that a defendant may also raise equitable defenses. 851 F. 2d at 89. Thus, the Third Circuit all but recognized that a cost recovery claim by a private PRP is a claim for contribution under §113 of CERCLA because a §107(a) cost recovery action has only the limited defenses specified in §107(b).



The Third Circuit's interpretation of allowing equitable defenses, thus classifying a cost recovery claim by a private PRP as a §113 contribution claim, has been adopted by Transtech Industries, Inc. v. A & Z Septic Clean, 798 F. Supp. 1079 (D. N.J. 1992), appeal dismissed, 5 F. 3d 51 (3rd Cir. 1993), cert. denied, 114 S. Ct. 2692 (1994). In Transtech, a case that closely resembles the factual underpinnings before us, the EPA filed an action against the owners and operators of the Site, which was designed to force those responsible for the Site's situation to engage in cleanup operations. Plaintiff's in Transtech argued that the statutory scheme, §107 and §113, divides causes of action between privately initiated cleanups and cleanups initiated under threat by the EPA. Under plaintiffs' theory, claims of the former type constituted claims for response costs under §107, while claims of the latter type were contribution claims under §113(f)(1). The plaintiffs then contended that since they voluntarily began their cleanup operation, theirs was a cost recovery action under §107. Id. at 1085.

The Transtech opinion further held that Congress enacted section 113(f)(1), to provide for fairness in situations where one party was bearing the cost of a major hazardous waste site simply because the EPA targeted it first. Id. at 1086. The court in Transtech also rejected plaintiffs' argument that the action was a §107 cost recovery action because plaintiffs acted voluntarily in cleaning up the site. The court noted that



plaintiffs actions were clearly the result of government threats. Likewise, in the present action, Plaintiff Gould acted in response to EPA directives, highlighted by Gould's and the EPA's signing of the April, 1988, Consent Order. Thus, it appears evident that when a party, who agrees to cleanup a site pursuant to a settlement agreement, sues another liable party, it is a claim for contribution and it must be distinguished from cases in which a plaintiff incurred expenses on its own initiative.

In Witco Corp. v. Beekhuis, 38 F. 3d 682 (3rd Cir. 1994), the Third Circuit again implicitly held that a cost recovery claim by a private responsible party is a claim for contribution. The Third Circuit began its opinion by noting that the case before it was an action for contribution. 38 F. 3d at 684. Like the present matter, Witco was a suit brought by a site owner, who had signed a consent agreement with EPA, against other PRPs. The court several times cited the contribution action statute of limitations in §113(g)(3), always indicating that the action was properly one in contribution under §113.

Plaintiff Gould's reliance on Hatco Corp. v. W.R. Grace & Co., No. 94-5276, 1995 WL 396749 (3rd Cir. July 5, 1995), is misplaced. Gould asserts that Hatco stands for the proposition that a §107 cause of action is available to a private responsible party when they remediate a site. However, Hatco centered around §9607(e) which deals with indemnification, hold harmless, etc., agreements, conveyances; or subrogation rights. Hatco simply



does not hold that a §107 cost recovery action is available to a private responsible party.

Even if we were to determine that Hatco addressed the §107 issue, which it does not, we are of the opinion that the position adopted in Transtech (holding that when a party who agreed to cleanup pursuant to a settlement agreement sues a liable party, it is a claim for contribution and it must be distinguished from cases in which a plaintiff incurred expenses on its own initiative) is the proper approach when dealing with private responsible parties.

Plaintiff Gould also places reliance on the United States Supreme Court's decision in Key Tronic Corp. v. United States, 114 S. Ct. 1960 (1994), for its position that a §107 cost recovery action could be brought by a responsible party. Plaintiff Gould argues because the Supreme Court never suggested only innocent parties could bring a §107 action, that the Key Tronic opinion grants an implied cause of action for a responsible party to bring a §107 action. Nonetheless, it appears clear to this Court that Key Tronic focused on whether or not attorney's fees are a necessary cost of response within a §107 action.

In addressing the issue of recovering attorney's fees as response cost, Justice Stevens stated, " although §107 unquestionably provides a cause of action for private parties to seek recovery of cleanup costs, that cause of action is not explicitly set out in the text of the statute. To conclude that





a provision that only impliedly authorizes suit nonetheless provides for attorney's fees with the clarity required by Alyeska would be unusual if not unprecedented." Key Tronic at 1967.

Key Tronic's opinion focused on what types of fees may or may not be recoverable as part of §107 response costs. Because the Supreme Court suggested that an implied cause of action under §107 exists for private parties, (the Court never addressed the issue of whether or not only innocent parties could bring a §107 action), Gould argues that Key Tronic allows them to bring a §107 cost recovery action. However, Key Tronic did not answer the question of whether a responsible party could bring a §107 action. As numerous courts of appeals, including the Third Circuit, have addressed this very issue, we are unpersuaded by Gould's position that they can assert a §107 cost recovery action. The overwhelming belief is that when both parties are PRPs the action will sound in contribution.

Plaintiff Gould also places reliance on the recent decision in Bethlehem Iron Works, Inc. v. Lewis Industries, Inc., Civ. A. 94-0752, 1995 WL 376475 (E.D. Pa. June 20, 1995). In that case, the plaintiff was a responsible party that had incurred response costs in remediating a hazardous site under CERCLA. The plaintiff was allowed to bring a §107 cost recovery action. That opinion reasoned that "permitting plaintiffs to raise their §107 claims comports with CERCLA's goal of encouraging parties to initiate cleanup operations promptly and voluntarily." Bethlehem at 4.

This Court is of the opinion that the Bethlehem court



allowed a §107 action by focusing on CERCLA's goals of having responsible parties initiate cleanup actions voluntarily and promptly. Once again, in the instant action, Plaintiff Gould did not voluntarily initiate cleanup of the Marjol Site. Gould's cleanup operations were the direct result of the EPA Consent Order of April, 1988. Thus, we reiterate our support for the holding in Transtech Industries v. A & Z Septic Clean, 798 F. Supp. 1079 (D. N.J. 1992), appeal dismissed, 53 F.3d 51 (3rd Cir. 1993), cert. denied, 114 S. Ct. 2692 (1994), that when a party agrees to cleanup a site pursuant to a settlement agreement, and sues another liable party, it is a claim for contribution and must be distinguished from cases in which a plaintiff incurred expenses upon its own initiative.

#### OTHER CIRCUITS

While the Third Circuit has only implicitly found that a cost recovery claim by a private party is a §113 contribution action, other circuits have explicitly found that in private party CERCLA actions, one responsible party's claim against another responsible party is a contribution claim subject to the provisions of §113.

In United States v. Colorado & Eastern R.R., 50 F.3d 1530 (10th Cir. 1995), a PRP brought a cross-claim against another PRP under §107 and the targeted PRP argued that the claim should be treated as a "contribution" claim. The court found that the claimant was a PRP and "therefore, any claim that would reapportion costs between [the] parties is the quintessential



claim for contribution." Id. at 1536, citing Restatement (Second) of Torts at 888A (1979), and Amoco Oil v. Borden, Inc., 889 F. 2d 664, 672 (5th Cir. 1989). The Tenth Circuit further reasoned that to allow one PRP to recover costs from another PRP under the strict liability scheme of §107 would eviscerate §113. Id. at 1536.

In United Technologies Corp. v. Browning-Ferris Industries, Inc., 33 F. 3d 96 (1st Cir. 1994), cert. denied, 115 S.Ct. 1176 (1995), the First Circuit found that the plaintiff's action was one for "contribution" and not for cost recovery under §107. The court determined that the plaintiff was also a liable party and concluded that its claim "must be classified as an action for contribution." Id. at 101.

Additionally, the Seventh Circuit in Akzo Coatings v. Aigner Corp., 30 F. 3d 761 (7th Cir. 1994), found that a liable party seeking recovery of costs it had incurred in cleanups, has only a claim for "contribution" despite the fact that §107 permits "any person" to seek recovery. The court determined that Akzo had no cause of action under §107 because:

Akzo has experienced no injury of the kind that would typically give rise to a direct claim under Section 107(a) -- it is not, for example, a landowner forced to clean up hazardous materials that a third party spilled onto its property or that migrated there from adjacent lands. Instead, Akzo itself is a party liable ... and the gist of Akzo's claim is that the costs it has incurred should be apportioned equitably amongst itself and the others responsible.... That is a quintessential claim for contribution.

Id. at 764.



In Amoco Oil Co. v. Borden, Inc., 889 F. 2d 664 (5th Cir. 1989), the Fifth Circuit held that any action among PRPs is for contribution. In Amoco, a PRP sued to recover response costs it had incurred and would incur under a cleanup. The court held it first must determine if the defendant is a liable person under §107(a). The "court then must ascertain, under CERCLA's contribution provision, each responsible party's equitable share of the cleanup costs." Id. at 668. "When one liable party sues another to recover its equitable share of the response costs, the action is one for contribution..." Id. at 672.

We find no credence in Gould's argument that the Amoco case is an example of courts using a two-step process to determine each party's response costs. The fact that the Amoco court went to §107(a) first was merely to determine if a party was liable, for it is §107(a) that determines whether or not a party is liable. Gould favors an approach whereby a PRP can bring a §107 action to recover its response cost and then have the other liable parties bring a §113 contribution counterclaim to allocate liability. Amoco looked to §107(a) only to determine if a party may be liable. It was not a situation where the two-step process was initiated. Because both parties, like here, were PRPs, the claim to reapportion costs between the parties was found to be a contribution claim.

Most recently, Control Data Corp. v. S.C.S.C. Corp., 53 F. 3d 930, 1995 U.S. App. Lexis 10285 (8th Cir. May 10, 1995), joined the growing list of appeals courts that ruled that private





party CERCLA litigation brought by a liable party to recover costs is an action governed by the contribution provisions of §113.

Based on the numerous circuit holdings as well as the implicit findings in the Third Circuit, when a private responsible party sues another responsible party to apportion costs, that action will be a "contribution" action pursuant to §113. The cases relied upon by Plaintiff Gould are either misplaced or distinguishable. In a factual situation, like the present action, where a responsible party initiates a site cleanup pursuant to governmental pressure, and then sues another responsible party to allocate the costs, the action falls under the provisions of §113. We agree that a private cause of action may exist under §107, as is implied by Key Tronic Corp. v. United States, 114 S. Ct. 1960 (1994). However, the issue of whether the action is available for a non-innocent party was never addressed by the Supreme Court. As such, we have proceeded along the same avenue taken by the United States Court of Appeals for the 1st, 5th, 7th, 8th and 10th Circuits, as well as the implicit findings of the Third Circuit in Smith Land & Improvement Co. v. Celotex Corp., 851 F. 2d 86 (3rd Cir. 1988), cert. denied, 488 U.S. 1029 (1989); and Witco Corp. v. Beekhuis, 38 F. 3d 682 (3rd Cir. 1994). Plaintiff Gould may not bring a §107 cost recovery action and is instead limited to bringing a §113 contribution action. Partial Summary Judgment is therefore granted to the moving Defendants on the nature of the claim issue.



"ORPHAN SHARES"

After finding in favor of the moving Defendants on their motion for partial summary judgment with respect to Plaintiff Gould being limited to asserting a §113 cause of action, we turn our attention to the issue concerning the so-called "orphan shares" that were deposited at the Marjol-Site. Since liability under a §113 action is several, not joint and several, each party is only responsible for their proportionate share of the harm caused at the Marjol-Site.

The Defendants are not responsible to Gould for the "orphan shares" in question. The contribution provision of §113 states in part, " In resolving contribution claims, the court may allocate response costs among the liable parties under such equitable factors as the court determines are appropriate." 42 U.S.C. §9613(f)(1). In allocating response costs, this Court can think of no greater equitable factor than Plaintiff Gould's own waste-in-list. This list establishes the exact amount of harm caused by every Defendant, after the deduction of Plaintiff's share and the "orphans shares". As liability in a §113 contribution action is several, the Defendants are responsible for their respective contributions to the harm at the Marjol-Site. It appears to this Court that it would be most inequitable to hold Defendants liable for any of the "orphan shares" when Gould's waste-in-list specifically indicates the exact amount each Defendant contributed to the harm.



Therefore, Defendants motion for partial summary judgment is granted with respect to each Defendant being responsible for its own contribution to the harm. Plaintiff Gould cannot collect any part of the "orphan shares" from the Defendants.

#### STATUTE OF LIMITATIONS

Turning to the issue concerning the applicable statute of limitations for a contribution action, the parties are clearly in disagreement as to which statute applies. The parties cite two different sections of CERCLA as being the applicable statute of limitations section.

The court in United Technologies Corp. v. Browning-Ferris Industries, 33 F. 3d 96, 99 (1st Cir. 1994), cert. denied, 115 S. Ct. 1176 (1995), stated that the statutory language of §113(g)(2) and §113(g)(3) suggests that cost recovery and contribution actions are distinct and do not overlap. This reasoning becomes vital when examining the respective positions of the parties. We believe both sides are somewhat incorrect in their briefs on this issue. Plaintiff Gould is in error in asserting that §113(g)(2) is the appropriate statute of limitations section and likewise, Defendants are incorrect in asserting that under §113(g)(3) Plaintiff is time barred by the three year statute of limitations from bringing this action.

Plaintiff Gould is of the opinion that they can bring a cost recovery action under §107 of CERCLA. 42 U.S.C. §9607. This section is controlled by the statute of limitations in §113(g)(2) which reads as follows:



(2) Actions for recovery of costs

An initial action for recovery of the costs referred to in section 107 of this title must be commenced--

- (A) for a removal action, within 3 years after completion of the removal action, except that such recovery action must be brought within 6 years after a determination to grant a waiver under section 9604(c) (1) (C) of this title for continued response action; and
- (B) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, except that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph..

As discussed at length earlier, the case law both in this Circuit and several others requires that Plaintiff Gould may bring this action pursuant to a §113 contribution action but they cannot bring the action pursuant to a §107 cost recovery action. Thus, since contribution actions and cost recovery actions are, separate and distinct, Plaintiff Gould's assertion that §113(g)(2) is the applicable statute of limitations is incorrect, since that section relates to cost recovery actions under §107, while the instant case is a contribution action under §113.

The Defendants in this matter are of the belief that the applicable statute of limitations is contained in §113(g)(3). This statute reads as follows:

(3) Contribution

No action for contribution for any response costs or damages may be commenced more than 3 years after--

- (A) the date of judgment in any action under this chapter for recovery of such costs or damages, or





- (B) the date of an administrative order under section 9622(g) of this title (relating to de minimis settlements) or 9622(h) of this title (relating to cost recovery settlements) or entry of a judicially approved settlement with respect to such costs or damages.

Defendants are correct in their assertion that §113(g)(3) is the applicable statute of limitations, however, their interpretation of the statute is somewhat flawed. Defendants state that under §113(g)(3), the statute of limitations is three years from the date that the plaintiff enters a consent agreement with the United States to clean the site. See United Technologies Corp. v. Browning-Ferris Industries, Inc., 33 F. 3d 96 (1st Cir. 1994).

Defendants contend that Gould's past-cost claim is time barred under §113(g)(3) since Gould signed a Section 106 consent order with EPA in April, 1988, but did not file the present action until December, 1991, that is, more than three (3) years after the signing of the consent order.

Plaintiff Gould argues that none of the four (4) triggering events contained in §113(g)(3) have occurred and therefore they are not time barred by that section. The four events that trigger the running of the statute of limitations are as follows:

- (1) the entry of a judgment;
- (2) a section 9622(g) de minimis settlement;
- (3) a section 9622(h) cost recovery settlement; and
- (4) a judicially approved settlement

Plaintiff Gould is correct in its assertion that none of the four triggering events have occurred and thus, Gould's claim is



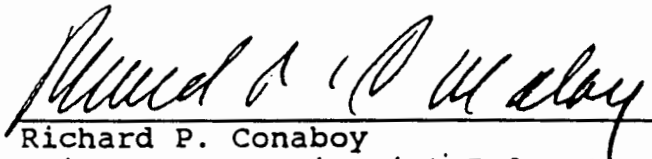
not time barred by §113(g)(3). Gould entered into a consent agreement with EPA to cease its battery operations at the Marjol-Site. The consent agreement is in no way equivalent to any of the four necessary triggering events that would run the three year limitation period contained in §113(g)(3).

The clear language of §113(g)(3) states that "no action for contribution for any response costs or damages may be commenced more than 3 years after---(any of the four triggering events)." As none of the so called triggering events have occurred, Gould's claim, which is one for contribution, is timely brought. Gould's entering into a section 106 consent order with the EPA in April, 1988, is not one of the four triggers for running the statute of limitations. Accordingly, Defendants motion for partial summary judgment with respect to Gould's action being time barred by the statute of limitations in §113(g)(3) is denied.



CONCLUSION

For the reasons indicated above, the moving Defendants' motion for partial summary judgment is granted in part and denied in part. Defendants' motion is granted with respect to the nature of the claim. Plaintiff Gould may not bring a §107 cost recovery action, but may only assert a §113 contribution action. In regards to liability, Defendants' motion is granted and liability will be several only. Furthermore, the motion also grants partial summary judgment to Defendants in holding that they are not responsible to Gould for the "orphan shares". Finally, the Defendants' motion for partial summary judgment is denied with respect to the statute of limitations argument. The applicable statute of limitations is contained in §113(g)(3) and does not bar Plaintiff Gould from bringing this action. An appropriate Order is attached.

  
Richard P. Conaboy  
United States District Judge

Date: 9/14/85



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GOULD INC.,

Plaintiff

v.

A & M BATTERY AND  
TIRE SERVICE, et al.,

Defendants

:

:

: 3 CV-91-1714

:

FILED  
SCRANTON

SEP 14 1995

PER [Signature]  
DEPUTY CLERK

ORDER

AND NOW, THIS 14<sup>th</sup> DAY OF AUGUST, 1995, IT IS HEREBY

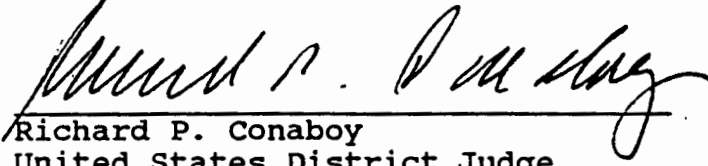
ORDERED THAT:

1. Defendants' Motion for Partial Summary Judgment (Doc. No. 796) is GRANTED IN PART and DENIED IN PART.
2. Defendants' motion is GRANTED in disallowing Plaintiff Gould from asserting a §107 cost recovery action and limiting Gould's action to a §113 contribution action.
3. Defendants' motion is GRANTED whereby each Defendant is only severally liable for their respective share of the harm caused at the Marjol-Site.
4. Defendants' motion asserting that they are not responsible to Plaintiff Gould for the "orphan shares" is GRANTED.





5. Defendants motion relating to the statute of limitations is DENIED. Plaintiff Gould is not time barred from bringing a §113 contribution action.
6. This opinion disposes of document numbers 792 and 796 respectively.
7. The Clerk of Court is directed to mark the docket sheet accordingly.

  
Richard P. Conaboy  
United States District Judge

**FILED  
SCRANTON**

SEP 14 1995

PER   
DEPUTY CLERK



UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

537  
6/6/94

FILED  
CORRECTION

PER [Signature]

GOULD INC.

Plaintiff,

v.

A&M BATTERY & TIRE SERVICE, et al.

Defendants.

and

WIMCO METALS INC.,

Defendant and  
Third-Party Plaintiff,

v.

M.N. ADELSON & SONS, INC.

P.O. Box 947

Tarrtown Road

Kittanning, PA 16201

and

M. BERKOWITZ AND COMPANY, INC.

P.O. Box 753

Sharon, PA 16146

and

GEORGE BERMAN & SON, INC.

4402 Lorigan Street

Pittsburgh, PA 15224

and

JAMES BURROWS COMPANY

P.O. Box 107

Oakmont, PA 15139

and

PETER CLAIM

28 Princeton Avenue

Uniontown, PA 15401

Civil Action No.

91-1714

Hon. Richard P. Conaboy

THIRD-PARTY COMPLAINT



and

P.J. GRECO AND SON, INC.  
P.O. Box 229  
Pittsburgh Road  
Tarentum, PA 15084

and

JOE'S JUNK COMPANY  
P.O. Box 1912  
Clarksburg, WV 26301

and

MEADVILLE METAL COMPANY  
P.O. Box 1378  
986 North French Street  
Meadville, PA 16335

and

MENZOCK SCRAP COMPANY  
P.O. Box 100094  
Pittsburgh, PA 15233-1685

and

MILLER ROOT AND FUR COMPANY  
105 - 107 Buffalo Street  
Mannington, WV 26582

and

BERNARD PIRCHESKY  
301 Delmont Avenue  
Belle Vernon, PA 15012

and

OSCAR PLATT  
P.O. Box 68  
Uniontown, PA 15401

and

MAX SILVER AND SONS  
P.O. Box 625  
1501 Myrtle Street  
Erie, PA 16512

and



BARNEY SNYDER OF OHIO, INC.  
136 Fair Street  
Dillonvale, Ohio 43917

Third-Party Defendants.

### THIRD-PARTY COMPLAINT

1. Third-party plaintiff, Wimco Metals Inc. ("Wimco"), for its Third-Party Complaint against third-party defendants M.N. ADELSON & SONS; M. BERKOWITZ AND COMPANY, INC.; GEORGE BERMAN & SON, INC.; JAMES BURROWS COMPANY; PETER CLAIM; P.J. GRECO AND SON, INC.; JOE'S JUNK COMPANY; MEADVILLE METAL COMPANY; MENZOCK SCRAP COMPANY; MILLER ROOT AND FUR COMPANY; BERNARD PIRCHESKY; OSCAR PLATT; MAX SILVER AND SONS; and BARNEY SNYDER OF OHIO, INC., states and avers as follows:

### NATURE OF ACTION

2. This is a private cost recovery action brought by plaintiff under § 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a), to recover its costs of cleaning up hazardous substances from the Marjol Battery & Equipment Company site located in the Borough of Throop, Lackawanna County, Pennsylvania ("the Marjol site") and for a declaratory judgment on liability under CERCLA § 113(g)(2), 42 U.S.C. § 9613(g)(2), and for any future response costs incurred by plaintiff in connection with the Marjol site. Plaintiff also asserts a claim for indemnity and contribution under





Pennsylvania law and for restitution for all costs it has incurred and may incur with respect to the Marjol site. Third-party plaintiff brings this third-party action pursuant to § 113 of CERCLA, 42 U.S.C. § 9613 and Pennsylvania law.

#### JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 42 U.S.C. § 9613(b), 28 U.S.C. § 1331 and 28 U.S.C. § 1367.

4. This Court has personal jurisdiction over the third-party defendants because the third-party defendants arranged for the disposal or treatment or arranged with a transporter for transport for disposal or treatment of spent lead acid batteries or other materials that contained lead, a hazardous substance, into the stream of commerce which batteries or materials subsequently were disposed of or treated at the Marjol site.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 9613(b) because the alleged release of hazardous substances occurred in the Middle District of Pennsylvania.

#### FACTS

6. In its Third Amended Complaint, a copy of which is attached hereto and incorporated herein, plaintiff alleges as follows:

A. The Marjol site is approximately 43 acres in size and is located in the Borough of Throop, Lackawanna County, Pennsylvania.



B. From approximately 1963 to 1980, Lawrence Fiegleman owned and operated a battery crushing and lead recovery operation at the Marjol site.

C. Gould purchased the Marjol Battery & Equipment Company from Mr. Fiegleman in May 1980 and continued its operation until April 1981. From November 1981 through April 1982, Gould used the Marjol site as a transfer station for batteries being shipped to other sites. In April 1982, Gould ceased all operations at the site.

D. During the operation of the Marjol site, hazardous substances, including lead, were inadvertently released into the soils in and around the site, including the soils of neighboring properties.

E. In 1987, the United States Environmental Protection Agency ("EPA") performed an investigation of the levels of lead and other hazardous substances at the Marjol site and the surrounding area.

F. In April 1988, the EPA required Gould to enter into a Consent Agreement and Order pursuant to § 106 of CERCLA, 42 U.S.C. § 9606, to, inter alia, conduct site stabilization activities concerning lead and other hazardous substances at the Marjol site and address lead-contaminated soils on nearby residential properties ("the EPA CERCLA Order"). Pursuant to that Order, as amended, Gould has undertaken the following response actions among others:



i. The preparation and implementation of a Site Health and Safety Plan.

ii. Site security measures, including the installation of fencing around the site and surrounding contaminated property and the provision of 24-hour guard service.

iii. Site stabilization measures to address potential contamination from disposed battery casings, including the designation of haul roads; providing vegetative cover over exposed areas and broken asphalt; the demolition of remaining buildings and foundations; the paving or covering of parking and equipment storage areas; the installation of stormwater runoff control structures, including diversions, check dams and a stormwater detention basins; perimeter air quality monitoring; and site maintenance.

iv. A study to determine the extent of contamination ("EOC") relating to the Marjol site, which included over 400 soil samples; the sampling of ground and surface water; the submission of a report to EPA in May 1989; the conducting of further studies at EPA's direction; the preparation of a supplemental EOC report (now in progress); and specialized soil tests.

v. Removal of contamination from nearby residences as identified on the EOC study, including the removal of contaminated soils from 125 properties and stockpiling of that soil on the Marjol site; the removal of trees and shrubs; the restoration of excavated properties; the excavation and installation of a 1500 linear foot storm sewer in a drainage ditch; interior housecleaning



at residences where exterior excavation occurred; the excavation of battery casings beneath a Borough street and rebuilding of the road; the demolition of two houses; the provision of temporary residences during removal activities; the performing of annual blood lead monitoring to ensure that response actions did not adversely affect residents; the excavation of strip mining pits that had been backfilled with contaminated soils and battery casings; and the implementation of a community relations program including a full-time representative, newsletters and community meetings.

vi. The preparation and submission to EPA for approval of work plans and design drawings and specifications prior to undertaking specific tasks, and the preparation and submission to EPA of reports following the completion of tasks.

G. Gould has completed most or all requirements under the CERCLA Consent Order.

H. As of the date of the filing of this complaint, Gould has incurred in excess of \$17.5 million in costs in connection with the performance of its obligations under the EPA CERCLA Order. Those costs were incurred by Gould consistent with the National Contingency Plan, 40 C.F.R. Part 300 (the "NCP"). Gould also has incurred costs associated with identifying and locating defendants in excess of \$200,000. Gould will incur costs in the future pursuant to the EPA CERCLA Order consistent with the NCP.

I. In May 1990, the EPA required Gould to enter into a Consent Agreement and Order pursuant to § 3008(h) of the Resource





Conservation and Recovery Act, 42 U.S.C. § 6928(h), to undertake interim measures and a facility investigation concerning hazardous wastes allegedly found at the Marjol site ("the EPA RCRA Order").

J. Pursuant to the EPA RCRA Order, Gould has completed or commenced the following response actions, at a cost of more than \$1 million.

i. Completed the development and submission to EPA of work plans to perform a RCRA Facility Investigation ("RFI").

ii. Completed the implementation of RFI tasks including a hydrogeologic investigation of the Marjol site consisting of the installation of 17 groundwater monitor wells and the collection and analysis of groundwater samples and elevations from those wells; conducting of air monitoring at and around the Marjol site; collection of more than 500 soil samples of on-site fill areas to determine the volume, physical characteristics and chemical characteristics of contaminated fill.

iii. Commenced a mine subsidence study.

iv. Commenced treatability studies for contaminated soils and battery casings.

K. The actions that Gould has performed thus far and the costs it has incurred in compliance with the requirements of the EPA RCRA Order have been performed and incurred consistent with the NCP. Gould will perform acts and incur costs in the future pursuant to that Order in a manner consistent with the NCP. Those actions will include the preparation and submission to EPA of a final RFI report and a mine subsidence study; the conduct of a



baseline risk assessment; the completion of treatability studies; and the conduct of a corrective measures study to identify and assess alternative cleanup measures for the Marjol site that may be necessary to protect human health and the environment. Gould may also incur additional response costs in the future to remediate the site in a manner consistent with the NCP.

#### PARTIES

7. Third-party plaintiff is a corporation that has been sued by plaintiff in an action seeking alleged response costs relating to the Marjol site. Third-party plaintiff resides at 401 Penn Avenue, Pittsburgh, PA 15221.

8. Upon information and belief, each third-party defendant is found, resides in, or transacts business in the United States and is a "person" within the meaning of section 107 of CERCLA, 42 U.S.C. § 9607.

#### COUNT I (Contribution Under § 113 of CERCLA)

9. Third-party plaintiff hereby incorporates by reference Paragraphs 1 through 8 as though fully set forth herein.

10. Upon information and belief, at all times relevant hereto, the third-party defendants operated scrap processing and recycling businesses for the purpose of processing and recycling, among other things, lead-acid batteries or other forms of lead-containing scrap.

11. In its Third Amended Complaint, plaintiff Gould alleges that third-party plaintiff "arranged with transporters for the transport of junk batteries and other lead-and acid-containing



scrap to the Marjol site for the purpose of treatment and disposal . . . [and also] . . . arranged for the disposal and treatment of such materials at the Marjol site." In fact, to the extent third-party plaintiff transacted with plaintiff Gould with respect to any junk batteries or other lead- or acid-containing scrap, a substantial portion of such lead- or acid-containing batteries or scrap originated from the third-party defendants and was transported directly to the Marjol site by plaintiff Gould.

12. Upon information and belief, third-party plaintiff acted as a "broker" in connection with shipments of lead-acid batteries and other materials from the third-party defendants to plaintiff Gould.

13. In this regard, upon learning that third-party defendants wished to sell spent batteries or other scrap materials, third-party plaintiff would inform plaintiff Gould that the third-party defendants' lead-acid batteries or other materials were available for transport. Thereafter, Gould would arrange with third-party defendants to transport third-party defendants' batteries or other materials to the Marjol site.

14. Third-party plaintiff denies any liability to plaintiff. To the extent that third-party plaintiff is found liable to plaintiff, then third-party plaintiff, pursuant to § 113(f) of CERCLA, 42 U.S.C. § 9613(f), is entitled to contribution from the third-party defendants for any amounts paid in excess of third-party plaintiff's allocative share, if any.



COUNT II  
(Declaratory Judgment)

15. Third-party plaintiff hereby incorporates by reference paragraphs 1 through 14 as though fully set forth herein.

16. Plaintiff seeks a declaratory ruling under § 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), in favor of plaintiff and against all defendants jointly and severally for all response costs to be incurred by plaintiff in connection with the Marjol site.

17. If third-party plaintiff is declared liable to plaintiff for future response costs, then third-party plaintiff is entitled, pursuant to CERCLA § 113 and 28 U.S.C. §§ 2201 et seq. to a declaratory judgment declaring that the third-party defendants are similarly liable to third-party plaintiff and/or plaintiff for such future response costs in proportion to the third-party defendants' allocative share.

COUNT III  
(Indemnification and Contribution)

18. Third-party plaintiff hereby incorporates by reference paragraphs 1 through 17 as though fully set forth herein.

19. Plaintiff alleges that third-party plaintiff is solely liable and/or jointly and severally liable with other defendants for any and all costs incurred by plaintiff or which will be incurred by plaintiff with respect to the Marjol site and is liable to plaintiff for indemnity and/or contribution under Pennsylvania or any other applicable state law for all sums that plaintiff has expended to date or will expend in the future in connection with the Marjol site.





20. Third-party plaintiff denies any liability to plaintiff. To the extent that third-party plaintiff is found liable to plaintiff, then third-party plaintiff is entitled to indemnity or contribution under Pennsylvania and other applicable state law from the third-party defendants.

COUNT IV  
(Restitution)

21. Third-party plaintiff hereby incorporates by reference paragraphs 1 through 20 as though fully set forth herein.

22. Plaintiff alleges that third-party plaintiff is solely liable and/or jointly and severally liable with other defendants for any and all costs in connection with the cleanup of the Marjol site and, therefore, has a legal obligation to either clean up the Marjol site or in turn reimburse the federal and state governments for such cleanup. Plaintiff further alleges that third-party plaintiff has been unjustly enriched at the expense of plaintiff because plaintiff agreed to clean up the Marjol site and, therefore, plaintiff is entitled to restitution from third-party plaintiff for the cost of cleaning up the Marjol site.

23. Third-party plaintiff denies any liability to plaintiff. To the extent that third-party plaintiff is found liable to plaintiff for restitution then third-party plaintiff is entitled to restitution from third-party defendants.

WHEREFORE, third-party plaintiff Wimco prays for relief and demands judgment as follows:

(1) For an award of contribution to third-party plaintiff in an amount equal to all amounts which third-party plaintiff may be



obligated to pay to plaintiff in excess of third-party plaintiff's allocative share, if any;

(2) For a judgment in its favor and against the third-party defendants declaring that the third-party defendants are liable for the costs of any future actions taken by plaintiff at the Marjol site;

(3) For an award to third-party plaintiff by way of either indemnity or contribution for all or part of the amounts which third-party plaintiff may be obligated to pay plaintiff in excess of plaintiff's allocative share, if any;

(4) For an award of restitution from third-party defendants;

(5) For costs and attorneys' fees in bringing these claims;

and

(6) For such other and further relief as this Court deems appropriate.

WIMCO METALS INC.

By:

Gary Fremerman  
ITS COUNSEL

Daniel M. Steinway  
Gary M. Fremerman  
Deborah M. Lerner  
KELLEY DRYE & WARREN  
2300 M Street, N.W.  
Suite 300  
Washington, D.C. 20037  
(202) 955-9600



CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May, 1994, I caused a true and correct copy of the foregoing Third-Party Complaint to be served by United States mail, first-class, postage prepaid, to the parties and/or counsel on the Official Service List dated November 15, 1993, which is attached hereto.

*Gary Fremerman*

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Gary M. Fremerman



## GOULD INC. V. A&M BATTERY, et al.

### SERVICE LIST

Philip Medico, Jr., Esquire  
Medico Industries, Inc.  
1460 Wyoming Avenue  
Forty Fort, PA 18704  
(717) 283-3116

Attorney for Defendants  
A & M BATTERY & TIRE SERVICE  
COMMERCIAL IRON & METAL CO.  
LOUIS COHEN & SON, INC.  
R. L. POETH SCRAPYARD

Elliott Gerten, Esquire  
214 Main Street  
Hartford, CT 06106  
(203) 527-7044  
(203) 527-4968 (FAX)  
Attorney for Defendants  
A. SHAPIRO & SONS  
JOSEPH FREEDMAN CO., INC.

Richard J. Brickwedde, Esquire  
Green & Seifer, Attorneys, P.C.  
One Lincoln Center  
Syracuse, NY 13202-1387  
(315) 422-1391  
(315) 422-3549 (FAX)  
Attorney for Defendants  
ABE COOPER WATERTOWN CORP.  
ROTH BROTHERS SMELTING CORP.  
ROTH STEEL CORPORATION  
Joint Defense Group  
Co-Counsel for Defendants  
TIMPSON SALVAGE CO.  
WALLACE STEEL INC.

Stephen L. Nathan  
CBC Trading Co.  
Box 326  
Elizabeth, PA 15037  
Joint Defense Group  
for Defendants  
ABE E. NATHAN SONS

Merwyn J. Burstein, Esquire  
Burstein Law Offices  
1331 East Columbus Avenue  
Springfield, MA 01105  
(413) 734-6421  
(413) 731-6924 (FAX)  
Attorney for Defendants  
ACME METAL & RECYCLING, INC.

Joanne M. Walker, Esquire  
Manta & Weige  
2005 Market Street  
37th Floor  
Philadelphia, PA 19103  
(215) 851-6600  
(215) 851-6644 (FAX)  
Attorney for Defendants  
ACTION METAL COMPANY, INC.

Paul R. Thomson, Jr., Esquire  
Woods, Rogers & Hazlegrove  
Dominion Tower, Suite 1400  
10 S. Jefferson Street  
P.O. Box 14125  
Roanoke, VA 24038-4125  
(703) 983-7742  
(703) 983-7711  
Attorney for Defendants  
ADVANCE AUTO STORES CO. INC.

Donald S. Mitchell, Jr., Esquire  
Arens, Fox, Kinzer, Plotkin  
& Kahn  
1050 Connecticut Avenue  
Washington, DC 20036-3339  
(202) 857-6172  
Attorney for Defendants  
ALEXANDRIA SCRAP CORPORATION  
JULIAN C. COHEN SALVAGE CO.

Donald H. Brobst, Esquire  
Rosen, Jenkins & Greenwald  
15 South Franklin Street  
Wilkes-Barre, PA 18711  
(717) 826-5652  
(717) 826-5640 (FAX)  
Liaison Counsel  
Attorney for Joint Defense Group

Gerald J. Mathews, Esquire  
Menser, Rudin & Tvelpiece, P.C.  
Suite 500  
500 S. Salina Street  
Syracuse, NY 13202-3300  
(315) 474-7541  
(315) 474-4040 (FAX)  
Attorney for Defendants  
AMERICAN BAG & METAL CO. INC.

William Thompson, Esquire  
Law Offices of Eugene E. Dice  
1721 N. Front Street  
Suite 101  
Harrisburg, PA 17102  
(717) 238-4256  
Attorney for Defendants  
AMERICAN SCRAP CO.

Ronald G. Becker, Esquire  
Rohman, Gordon, Foreman  
and Goudine, P.C.  
Third Floor, Grant Building  
Pittsburgh, PA 15219  
(412) 338-1113  
(412) 281-7304 (FAX)  
Attorney for Defendants  
ANNE PORCHESKY  
ERIC PORCHESKY  
ERIC'S IRON & STEEL CORP.  
ERIC'S IRON & STEEL CORP. (P.C.)  
RIVERSIDE IRON & STEEL CORP.





Arnstin Carter Rowe, Esquire  
Kevin M. Young, Esquire  
Young, Stock & Rowe  
Executive Woods  
Two Palisades Drive  
Albany, NY 12205  
(518) 438-9907  
(518) 438-9914 (FAX)  
Attorney for Defendants  
B. MILLENS SONS, INC.  
BODOW RECYCLING CO.  
CHAUNCEY METAL PROCESSORS,  
INC.  
COUSINS METALS  
E. EFFRON & SON  
ELMAN RECYCLING CORP.

Sidney Baker, Esquire  
1700 Manor Building  
Pittsburgh, PA 15219  
(412) 471-0225  
(412) 261-2373 (FAX)  
Attorney for Defendants  
B. ZEFF COMPANY, INC.

Stephen Jurman, Esquire  
McCann, Garland, Ridell & Burke  
Suite 4000  
309 Smithfield Street  
Pittsburgh, PA 15222  
(412) 566-1818  
(412) 566-1817 (FAX)  
Joint Defense Group  
Co-Counsel for Defendants  
BARNEY SNYDER, INC.

Seth v. d. H. Cooley, Esquire  
Duane, Morris & Heckscher  
4200 One Liberty Place  
Philadelphia, PA 19103  
(215) 979-1838  
(215) 979-1020 (FAX)  
Attorney for Defendants  
BEN WEITSMAN & SON, INC.

Kenneth N. Klass, Esquire  
Michael L. Kresser, Esquire  
Blank, Rome, Comisky & McCauley  
Four Penn Center Plaza  
Philadelphia, PA 19103-2599  
(215) 596-5500  
Attorney for Defendants  
BRISTOL METAL CO., INC.  
SCHILBERG INTEGRATED METALS,  
CORP.

Gorman E. Getty, III, Esquire  
23 Washington Street  
P.O. Box 1485  
Cumberland, MD 21501-1485  
(301) 777-8032  
(301) 777-7048 (FAX)  
Attorney for Defendants  
BROCK'S SCRAP & SALVAGE

George W. Liebmann, Esquire  
8 West Hamilton Street  
Baltimore, MD 21201  
(410) 752-5887  
Attorney for Defendants  
CAMBRIDGE IRON AND METAL CO.,  
INC.

Richard H. F. ... Esquire  
Bundick International  
Vestian Park  
30 North Third Street  
5th Floor  
Harrisburg, PA 17101  
(717) 237-4850  
(717) 233-0852 (FAX)  
Joint Defense Group  
Co-Counsel for Defendants  
CAPITOL IRON & STEEL CO., INC.  
PENN HARRIS METALS CORP.

William A. Denman, Esquire  
Schmittinger and Rodriguez  
414 South State Street  
P.O. Box 497  
Dover, DE 19903  
(302) 578-4447  
(302) 574-1300 (FAX)  
Joint Defense Group  
Co-Counsel for Defendant  
CAPITOL SCRAP IRON & METALS,  
INC.

Edwin Utan, Esquire  
Epstein Utan & Wilson  
Suite 800  
Penn Security Building  
142 N. Washington Avenue  
Scranton, PA 18503-2211  
(717) 346-3881  
(717) 346-1425 (FAX)  
Attorney for Defendants  
CAPITOL SCRAPYARD  
LEONARD GORLICK

Morgan G. Graham, Esquire  
Phillips, Lytle, Hitchcock,  
Blaine & Huber  
3400 Marine Midland Center  
Buffalo, NY 14203  
(716) 847-8400  
(716) 852-6100 (FAX)  
Attorney for Defendants  
CHAPIN & FAGIN DIV. OF GCF, INC.  
WEINSTEIN CO.

Howard Wein, Esquire  
Klett, Lieber & Rooney  
40th Floor  
One Oxford Center  
Pittsburgh, PA 15219  
(412) 392-2160  
(412) 392-2128  
Joint Defense Group  
Co-Counsel for Defendants  
CHARLES BLUESTONE COMPANY  
SEGEL & SON, INC.

Hal K. Haveson, Esquire  
Haveson, Otis & Potter  
194 Nassau Street  
Princeton, NJ 08542  
(609) 921-0090  
(609) 683-4636 (FAX)  
Joint Defense Group  
Co-Counsel for Defendants  
CHARLES BLUESTONE COMPANY

K. William Clauson, Esquire  
Clauson, Smith & Whelan  
Ten Buck Road  
P.O. Box 749  
Hanover, NH 03755-0749  
(603) 643-2102  
(603) 643-1287 (FAX)  
Attorney for Defendants  
CLAREMONT METAL & PAPER  
STOCK CORP., INC.

Robert ... Esquire  
Oswald ... Esquire  
& Simon  
Bridgewater Place  
500 Plain Street  
Syracuse, NY 13204-1423  
(315) 442-0181  
(315) 442-0106 (FAX)  
Joint Defense Group  
Co-Counsel for Defendant  
CLIMAX MANUFACTURING  
EMPIRE RECYCLING CORPORATION  
MARLEY'S DIV. OF ABE COOPER  
SYRACUSE MATERIALS RECOVERY  
CORPORATION

Richard C. Daniels, Esquire  
Daniels & Daniels  
College Park Center  
7307 Baltimore Avenue  
Suite 112  
College Park, MD 20740-3206  
(301) 864-1100  
(301) 864-1277 (FAX)  
Attorney for Defendants  
CLINTON METAL CO.  
WALDORF METAL CO.

Catrina Glazebrook, Esquire  
Caplan & Luber  
40 Darby Road  
Paoli, PA 19301  
(215) 640-1200  
Joint Defense Group  
Co-Counsel for Defendants  
COATESVILLE SCRAP IRON &  
METAL CO. INC.

William J. Rubin, Esquire  
Rubin and Snyder  
22 Light Street, Suite 400  
Baltimore, MD 21202  
(301) 539-1700  
(301) 539-1752 (FAX)  
Joint Defense Group  
Co-Counsel for Defendants  
CONSERVIT, INC.  
MODERN JUNK & SALVAGE CO.

Joe Tabaka, Esquire  
Markovitz & Tabaka  
1001 East Emory Drive  
Suite 201  
Pittsburgh, PA 15216  
(412) 571-0600  
(412) 571-1635 (FAX)  
Attorney for Defendants  
CONTINENTAL METALS  
CORPORATION

Mark N. Cohen, Esquire  
Margolis, Edelstein, Scheris,  
Sarowitz & Kreamer  
Independence Square  
6th & Walnut Streets, 4th Floor  
Philadelphia, PA 19106-3304  
(215) 931-5848  
(215) 922-1772 (FAX)  
Attorney for Defendants  
CRESTWOOD METAL CORP.  
DENVER CONSTRUCTION CORP.  
17d/b/a LUKENS METAL CO.  
HAROLD STRAUSS

H. Reginald Belden, Jr., Esquire  
Belden, Belden, Perera, Johnson  
& Zukis  
Belden Building  
117 North Main Street  
Greensburg, PA 15601  
Attorney for Defendants  
DANIELS & MILLER, INC.



Howard C. Terrell, Esquire  
Levy & Preate  
507 Linden Street  
Suite 400  
Scranton, PA 18503-7679  
(717) 346-3816  
Attorney for Defendant  
DAVIS BRUS SCRAP CO., INC.

Robert L. Deichmeister, Esquire  
Fagelson, Schonberger, Payne &  
Deichmeister  
P.O. Box 3321  
Oakton, VA 22124-3321  
(703) 385-8282  
(703) 385-8761 (FAX)  
Joint Defense Group  
Co-Counsel for Defendant  
DAVIS INDUSTRIES

Joseph T. Wright, Jr., Esquire  
McDonnell, O'Brien & Wright  
203 Franklin Avenue  
Scranton, PA 18503  
(717) 344-9845  
(717) 343-9731 (FAX)  
Attorney for Defendant  
DENAPLES AUTO PARTS, INC.

Thomas E. Starnes, Esquire  
Andrews & Kurth  
1701 Pennsylvania Avenue, N.W.  
Suite 200  
Washington, D.C. 20006  
(202) 662-2700  
(202) 662-2739 (FAX)  
Attorney for Defendants  
DOUGLAS BATTERY MFG.  
COMPANY

Kevin M. Walsh, Esquire  
33 West South Street  
Wilkes-Barre, PA 18701  
(717) 825-6592  
Attorney for Defendant  
EXETER METALS CO.

Harry B. Wright, Esquire  
Exxon Company, U.S.A.  
P.O. Box 2180  
Houston, TX 77252-2180  
Attorney for Defendant  
EXXON CORP.

Wayne G. Renneisen, Esquire  
Harvey, Pennington, Hering &  
Renneisen, Ltd.  
11 Penn Center Plaza  
29th Floor  
1835 Market Street  
Philadelphia, PA 19103  
(215) 563-4470  
(215) 568-1044 (FAX)  
Attorney for Defendant  
LAWRENCE FIEGLEMAN

Jeffrey B. Waggoner, Esquire  
Rosen, Dandig, Scheraga, Hyland  
& Perotti  
Headquarter Plaza  
P.O. Box 1981  
Morristown, NJ 07962-1981  
(201) 534-1300  
(201) 534-1934 (FAX)  
Attorney for Defendants  
G. CARLOMI - DNO SCRAP  
J&J METALS INC  
MAXNOR METAL M. SCHIPPER  
& SON

Gary C. Homer, Esquire  
Spencer, Custer, Saylor, Wolfe and Rose  
P.O. Box 250  
Johnstown, PA 15907-0250  
(814) 536-0735  
Attorney for Defendant  
G.M. HONKUS & SONS, INC.

Joseph Solifanelli, Esquire  
Mellon Bank Building  
Suite 5004  
400 Spruce Street  
Scranton, PA 18503  
(717) 342-1629  
(717) 342-1640 (FAX)  
Attorney for Defendant  
GELB & CO., INC.

David G. Butterworth, Esquire  
Morgan, Lewis & Buckius  
2000 One Logan Square  
Philadelphia, PA 19103-6993  
(215) 963-5686  
(215) 963-5299 (FAX)  
Attorney for Defendant  
GENERAL BATTERY CORPORATION

Edward L. Paul, Esquire  
Weinberg and McCormick  
109 Haddon Road  
Haddonfield, NJ 08033  
(609) 795-1600  
(609) 795-9469 (FAX)  
Attorney for Defendant  
GIORDANO WASTE MATERIAL CO.  
HALPERN METALS COMPANY

Michael W. Davis, Esquire  
Barley, Snyder, Senft & Cohen  
126 East King Street  
Lancaster, PA 17602-2893  
(717) 399-1534  
(717) 291-4660 (FAX)  
Attorney for Defendants  
GORDON STEEL COMPANY  
GORDON WASTE COMPANY

Keith E. Osher, Esquire  
Hinman, Howard & Kattell  
700 Security Mutual Building  
80 Exchange Street  
Binghamton, NY 13901  
(607) 723-5341  
(607) 723-6605 (FAX)  
Attorney for Defendant  
GREENBLOTT METAL CO., INC.

Vann H. Leflore, Esquire  
McGuire, Woods, Butler & Boyne  
4000 World Trade Center  
Post Office Box 376  
Norfolk, VA 23514  
(804) 640-3776  
(804) 640-3701 (FAX)  
Joint Defense Group  
Co-Counsel for Defendant  
GUTTERMAN IRON & METAL CORP.

Mark R. Rosen, Esquire  
Mesirov, Gelman, Jaffe  
Cramer & Jaimieson  
1735 Market Street  
Philadelphia, PA 19103  
Joint Defense Group  
Co-Counsel for Defendant  
H & D METAL CO.

Ned M. Leginsky, Esquire  
2911 Dixwell Avenue  
Suite 204  
Hamden, CT 06518  
(203) 281-4225  
Joint Defense Group  
Co-Counsel for Defendant  
H. BIXON & SONS SCRAP & METAL

Ken LaFiandra, Esquire  
Marks, Kent & O'Neill  
Suite 1910  
1234 Market Street  
Philadelphia, PA 19107  
(215) 564-6688  
(215) 564-2526 (FAX)  
Attorney for Defendant  
H. SHAKESPEARE & SONS, INC.

Steven Eisenstein, Esquire  
Lum, Hoens, Conant, Danzis  
& Kleinberg  
103 Eisenhower Parkway  
Roseland, NJ 07068  
(201) 403-9000  
Attorney for Defendant  
HARRY GOLDBERG & SONS

John J. Privitera, Esquire  
McNamee, Lechner, Titus  
& William, P.C.  
75 State Street  
P.O. Box 459  
Albany, NY 12201-0459  
(518) 447-3200  
Joint Defense Group  
Co-Counsel for Defendant  
HUDSON SCRAP METAL, INC.  
JACOB SHER (d/b/a HUDSON SCRAP

Michael R. McGee, Esquire  
McGee & Gelman  
200 Summer Street  
Buffalo, NY 14222  
(716) 883-7272  
Attorney for Defendant  
HURWITZ BROS. IRON & METAL CO.  
INC.

Margaret A. Diamond, Esquire  
Cesler, Richman, Smith  
200 Washington Trust Building  
Washington, PA 15301-6820  
(412) 222-5100  
(412) 222-4239 (FAX)  
Attorney for Defendant  
I. RICHMAN & COMPANY, INC.



David L. Cook, Esquire  
Nixon, Hargrave, Devens & Doyle  
Clinton Square  
P.O. Box 1051  
Rochester, NY 14603  
(716) 263-1381  
(716) 263-1600 (FAX)  
Joint Defense Group  
Co-Counsel for Defendant  
I. SHULMAN & SON CO., INC.

INDEPENDENT IRON & METAL  
J.B. BARNEY R. RADOV  
4221 Sunnydale Blvd.  
Ene. PA 16504-1650

Harwell M. Darby, Jr., Esquire  
Glen, Flippin, Feldmann & Darby  
280 First Campbell Square  
P.O. Box 2887  
Roanoke, VA 24001  
(703) 224-8000  
(703) 224-8050 (FAX)  
INDUSTRIAL & MILL SUPPLIERS,  
INC.  
VIRGINIA SCRAP IRON & METAL  
CO., INC.

N. Theodore Sumner, Esquire  
Hinman, Howard & Kattell  
700 Security Mutual Building  
80 Exchange Street  
Binghamton, NY 13901  
(607) 723-5341  
(607) 723-6605  
Attorney for Defendants  
INTERSTATE BURLAP & BAG CO.,  
INC.

Herbert Siegelman, Esquire  
299 Broadway  
New York, NY 10007  
Attorney for Defendants  
IRVING RUBBER & METAL  
COMPANY

Frances Valdez Valdez, Esquire  
J.C. Penney Co., Inc.  
P.O. Box 659000  
Dallas, TX 75265-9000  
(214) 591-1000  
(214) 591-1133 (FAX)  
Joint Defense Group  
Co-Counsel for Defendant  
J.C. PENNEY CO., INC.

Steven E. Snow, Esquire  
Partridge, Snow & Hahn  
180 S. Main Street  
Providence, RI 02903  
(401) 861-8200  
(401) 861-8310 (FAX)  
Attorney for Defendant  
J. BROOMFIELD & SONS, INC.

Laurence Sepenuk, Esquire  
21 Hyatt Avenue  
Newark, NJ 07105  
(201) 589-0380  
Joint Defense Group  
Co-Counsel for Defendant  
J. SEPENUK & SONS, INC.

George W. Burrows  
P.O. Box 107  
Oakmont, PA 15109  
(412) 423-3442  
For Defendant  
JAMES BURROWS COMPANY

Bernie Labuskas, Esquire  
M. Neene Wallace & Nunnuk  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108  
(717) 232-8000  
(717) 232-2665 (FAX)  
Attorney for Defendant  
JOE KRENTZMAN & SONS

Mr. William A. White, Treasurer  
JOE KRENTZMAN & SONS  
P.O. Box 508  
Lewistown, PA 17044

Edward J. Tolchin, Esquire  
Fettman & Tolchin  
Suite 502  
10615 Judicial Drive  
Fairfax, VA 22030  
(703) 385-9500  
(703) 385-9893 (FAX)  
Joint Defense Group  
Co-Counsel for Defendant  
JOSH STEEL CO.

Alvin J. Lushes, Esquire  
Derr, Pursel, Lushes & Norton  
238 Market Street  
P.O. Box 539  
Bloomsburg, PA 17815  
(717) 784-4654  
(717) 784-1281 (FAX)  
Attorney for Defendant  
KASSAB BROS.

Joseph B. Thor, Esquire  
Valley National Bank Building  
710 N. Fourth Street  
East Newark, NJ 07029  
(201) 483-1948  
Attorney for Defendant  
KEARNY SCRAP CO.

Daniel J. Kelleher, Esquire  
Kelleher & Kelleher  
Oak and N. Keyser Avenue  
Scranton, PA 18508  
(717) 342-8141  
Attorney for Defendant  
KELLEHER BATTERY

Burton D. Tanenbaum, Esquire  
Culley, Marks, Tanenbaum,  
Reifsch, Potter & Capell  
30 Main Street West  
Rochester, NY 14614  
(716) 546-7830  
(716) 546-6456 (FAX)  
Attorney for Defendants  
KLEIN METAL CO., INC.  
LYELL METAL CO., INC.

KLIONSKY SCRAP IRON & METAL  
CO.  
7 Chapin Street  
P.O. Box 385  
Seneca Falls, NY 13148

Shawn Griffin, Esquire  
Jeffrey J. Raitman, Esquire  
300 West Big Beaver Road  
Troy, MI 48064  
(313) 643-1531  
Attorney for Defendant  
KIMART CORP.

Brian Yeager, Esquire  
Lenahan & Dempsey  
Suite 400 Kane Building  
116 North Washington Avenue  
Scranton, PA 18501  
(717) 346-2097  
(717) 346-1174 (FAX)  
Attorney for Defendant  
KREIGER WASTE PAPER CO.

Dana M. Loubitt, Esquire  
Allen, Lippes & Shonn  
1260 Delaware Avenue  
Buffalo, NY 14209-2498  
(716) 884-4800  
Attorney for Defendant  
LAKE ERIE RECYCLING

Philip Lipps, Esquire  
1780 Wehrle Drive, Suite 300  
P.O. Box 510  
Williamsville, NY 14231-0510  
(716) 634-3776  
(716) 634-3119 (FAX)  
Attorney for Defendants  
LANCASTER IRON & METAL CO.,  
INC.

Michael W. Flannelly, Esquire  
Counness, Gilbert & Andrews  
29 North Duke Street  
York, PA 17401  
(717) 848-4900  
(717) 843-9039 (FAX)  
Attorney for Defendant  
LARAMI METAL CO.

Paul F. Burroughs, Esquire  
Quinn, Gent, Buseck & Leenhuis  
1222 W. Grandview Boulevard  
Ene. PA 16506  
(814) 833-2222  
(814) 833-6753 (FAX)  
Joint Defense Group  
Co-Counsel for Defendant  
LIBERTY IRON & METAL CO., INC.

Jordan W. Tucker, Esquire  
Glabman, Rubenstein & Reingold  
26 Court Street  
Brooklyn, NY 11242  
(718) 875-4805  
(718) 875-4810 (FAX)  
Attorney for Defendant  
LONI-IO METALS /VIA ATTONITO  
RECYCLING CORPORATION

Victor C. Silverman, Esquire  
Lippes, Silverman, Mathias & Wexler  
700 Guarany Building  
28 Church Street  
Buffalo, NY 14202-3950  
(716) 853-5100  
(716) 853-5199 (FAX)  
Attorney for Defendant  
LOUIS LEVIN & CO. (INC.)



Mr. Alvin G. Mack  
750 Warren Avenue  
Portland, ME 04103  
(207) 773-0273  
For Defendant  
LOUIS MACK CO. INC.

Daniel V. Grossman, Esquire  
635 Madison Avenue  
New York, NY 10022  
(212) 371-4656  
(212) 319-6492 (FAX)  
Attorney for Defendant  
LUKENS METAL CORP.

Douglas F. Eaton, Esquire  
27th Floor Law Office  
1370 Avenue of the Americas  
New York, NY 10019  
(212) 757-6767  
(212) 757-4053 (FAX)  
Attorney for Defendant  
LUKENS METAL CORP.

Maureen Lillione, Esquire  
Twomey, Latham, Shea & Kelley  
33 West Second Street  
P.O. Box 398  
Riverhead, NY 11901  
Joint Defense Group  
Co-Counsel for Defendant  
M & M SCRAP CORP.

David C. Hawkins, Esquire  
Mormassey & Hawkins  
One International Place  
Boston, MA 02110-2602  
(617) 345-4500  
(617) 345-0286 (FAX)  
Attorney for Defendant  
M. BURNSTEIN & CO., INC.

M. HARTMAN CO.  
154 Queenston Drive  
Pittsburgh, PA 15235

Neal J. Hurwitz, Esquire  
27th Floor Law Office  
1370 Avenue of the Americas  
New York, NY 10019  
(212) 757-6767  
(212) 757-4053 (FAX)  
Attorney for Defendant  
M.C. CANFIELD SONS

Robert W. Weidner, Esquire  
Mettions, Mettione & Mettione, Ltd.  
399 Market Street  
Philadelphia, PA 19106-2138  
(215) 629-1600  
Attorney for Defendant  
METAL BANK OF AMERICA  
UNION CORP. P/O  
JACOBSON METAL CO.

Walter Grabowski, Esquire  
Houngan, Kluger, Spahrer & Quinn  
Suite 700, United Penn Bank Building  
Wilkes-Barre, PA 18701-1867  
(717) 825-9401  
(717) 829-3460 (FAX)  
Attorney for Defendant  
MEYER-SABA METALS CO.

James C. Conna, Esquire  
Deborah L. Conna, Esquire & John  
30 Rockefeller Plaza  
New York, NY 10022  
(212) 632-3000  
(212) 632-3321 (FAX)  
Attorney for Defendant  
MID-CITY SCRAP IRON & SALVAGE  
CO.

Richard E. Lyons, Esquire  
Hoffman, Appel & Lyons  
Suite 302, Willow Bldg  
4400 Executive Blvd.  
Rockville, MD 20852  
(301) 770-1543  
(301) 770-1543 (FAX)  
Joint Defense Group  
Co-Counsel for Defendant  
MONTGOMERY IRON & METAL CO.

Joseph J. Heston, Esquire  
Dougherty, Leventhal & Price  
450 Wyoming Avenue  
Kingston, PA 18704  
(717) 388-1427  
(717) 388-0799 (FAX)  
Attorney for Defendant  
MORGAN HIGHWAY AUTO PARTS

Peter E. Nahmas, Esquire  
Lowenstein, Sandler, Kohl,  
Fisher & Boylan  
65 Livingston Avenue  
Roseland, NJ 07068  
(201) 992-8700  
(201) 992-5820 (FAX)  
Attorney for Defendant  
NAPORANO IRON & METAL CO.

NEWBURGH SCRAP CO.  
110 Mill Street  
Newburgh, NY 12550

David F. Grady, Esquire  
Hogan & Hanson  
Columbia Square  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004  
(202) 637-5761  
(202) 637-5910 (FAX)  
Attorney for Defendant  
NOTT ENTERPRISES, INC. P/O  
FRANK H. NOTT INC.

William C. Kriner, Esquire  
Kriner, Knepper and Kirk  
110 N. Second Street  
P.O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611  
(814) 765-9503 (FAX)  
Attorney for Defendant  
NOVEY METAL CO.

Daniel A. DeRose, Esquire  
Kahoe & DeRose  
Exchange National Bank Bldg.  
P.O. Box 548  
Olean, NY 14760  
(716) 372-2161  
Joint Defense Group  
Co-Counsel for Defendant  
OLEAN STEEL SALES & SERVICE,  
INC.

Mr. Philip Jacobson, President  
P. JACOBSON INC.  
440 Columbia Street  
Somerville, MA 02143

Lawrence J. Holt, Esquire  
Cedar, Strauss & Holt  
410 Middle Country Road  
P.O. Box 2100  
Seiden, NY 11784-0614  
(516) 732-6600  
Joint Defense Group  
Co-Counsel for Defendant  
P. K. SCRAP METAL CO.

PENN JERSEY RUBBER & WASTE  
1112 Chestnut Street  
Camden, NY 08103

PETTINELLI USED AUTO PARTS  
IRON & METAL  
Mainin  
Rome, NY 13440

Laurence May, Esquire  
Angel & Frankel  
366 Madison Avenue  
6th Floor  
New York, NY 10017-3191  
(212) 286-0100  
Attorney for Defendant  
PHILIP MAY CO.

Andres R. Moore, Esquire  
Jaekle, Fleischmann & Muegel  
Norman Bldg.  
12 Fountain Plaza  
Buffalo, NY 14202  
(716) 856-0600  
(716) 856-0432 (FAX)  
Attorney for Defendant  
R & R SALVAGE, INC.

Stephen J. Kleeman, Esquire  
Keyser Building, Suite 612  
207 E. Redwood Street  
Baltimore, MD 21202  
(410) 752-1220  
(410) 332-1048 (FAX)  
Joint Defense Group  
Co-Counsel for Defendant  
RIEDEL SCRAP & SALVAGE

Jack Altin, Esquire  
Mayer, Brown & Platt  
787 Seventh Avenue  
New York, New York 10019-6018  
(212) 554-3157  
(212) 262-1910 (FAX)  
Joint Defense Group  
Co-Counsel for Defendant  
S. KASOWITZ & SONS, INC.





John R. Embick, Esquire  
Kittredge, Donley, Elson,  
Fuller & Embick  
401 Chestnut Street  
Philadelphia, PA 19106  
(215) 329-9900  
(215) 329-9888 (FAX)  
Joint Defense Group  
Co-Counsel for Defendant  
SAM KAUFMAN & SON METAL CO

Alfred J. Owings, Esquire  
Spinella, Owings & Shala, P.C.  
P.O. Box 7510  
Richmond, VA 23255-1510  
(804) 747-0920  
(804) 270-7258 (FAX)  
Attorney for Defendant  
SMITH IRON & METAL CO., INC

Lawrence M. Rosenstock, Esquire  
Tenzler, Grenniatt, Failon & Kaplan  
The Chrysler Building  
405 Lexington Avenue  
New York, NY 10174  
(212) 573-4300  
(212) 573-4313 (FAX)  
Attorney for Defendant  
SOLA METAL

John A. Noonan, Esquire  
18 Dana Street  
P.O. Box 949  
Tauton, MA 02324  
(508) 824-5425  
(508) 822-1081 (FAX)  
Joint Defense Group  
Co-Counsel for Defendant  
SONE ALLOYS & ENOS METALS

Bruce O. Becker, Esquire  
Becker, Card & Levy, P.C.  
Endicott Trust Building  
148 Vestal Parkway East  
Vestal, NY 13850  
Attorney for Defendant  
STADMAN INDUSTRIES, INC.

Peter G. Shaheen, Esquire  
89 Main Street  
North Andover, MA 01845  
(508) 689-0800  
(508) 794-0890 (FAX)  
Joint Defense Group  
Co-Counsel for Defendant  
STATE LINE SCRAP CO., INC.

Francis J. Brady, Esquire  
Everett Newton, Esquire  
Murtha, Cullins, Richter & Pinsky  
City Place I  
185 Asylum Street  
Hartford, CT 06103  
(203) 240-6065  
Attorney for Defendant  
SUISMAN & BLUMENTHAL

Nathan Braverman, Esquire  
Shapiro and Olander  
Twentieth Floor  
Charles Central South  
36 South Charles Street  
Baltimore, MD 21201-3147  
(410) 385-4283  
(410) 539-7811 (FAX)  
Attorney for Defendant  
THE BEST BATTERY COMPANY

Harry R. Weiss, Esquire  
Baillard, Spahr, Andrews &  
Ingerson  
1725 Market Street  
5th Floor  
Philadelphia, PA 19103-7409  
(215) 364-4129  
(215) 364-8999 (FAX)  
Attorney for Defendant  
TOWANDA IRON AND METAL, INC

Thomas M. Wood, IV, Esquire  
Newberger, Quinn, Gielen & Rubin, P.C.  
Equitable Bank Center Tower II  
100 S. Charles Street  
Baltimore, MD 21201  
(410) 332-8523  
(410) 332-8594 (FAX)  
Attorney for Defendant  
UNITED HOLDING CO., INC

John P. Quirke, Esquire  
Heien G. Cullier, Esquire  
Farer Siegal Fersko, P.C.  
600 South Avenue  
P.O. Box 580  
Westfield, NJ 07091-0580  
Attorney for Defendant  
UNITED SCRAP IRON & METAL CO.

Alan D. Greenberg, Esquire  
Environment & Natural Resources Div  
Environmental Defense Section  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986  
(202) 514-1542  
Attorney for Defendant  
UNITED STATES OF AMERICA

Stephen J. Ritchin, Esquire  
Berle, Kass & Case  
45 Rockefeller Plaza  
New York, NY 10111  
(212) 765-1800  
Attorney for Defendant  
UNIVERSAL WASTE, INC.

John Michael Spanakos, Esquire  
Spanakos and Spanakos  
9015 Fifth Avenue  
Brooklyn, NY 11208  
(718) 833-6900  
Attorney for Defendant  
V. VACCARO SCRAP CO.

Thomas P. Lihan, Esquire  
Connell, Foley & Geiser  
85 Livingston Avenue  
Roseland, NJ 07068-1765  
(201) 535-0500  
(201) 535-9217 (FAX)  
Attorney for Defendant  
VINCENT A. PACE SCRAP  
METALS, INC.

Paul H. Rothchild, Esquire  
Beacon & Wilson, P.C.  
33 State Street  
Springfield, MA 01103  
(413) 781-0560  
(413) 739-7740 (FAX)  
Joint Defense Group  
Co-Counsel for Defendant  
WILLIAM F. SULLIVAN CO., INC

Clayton L. Walton, Esquire  
Hazel & Thomas  
401 East Franklin Street  
Suite 200, P.O. Box 304  
Richmond, VA 23226  
(804) 344-3400  
(804) 344-3411 (FAX)  
Joint Defense Group  
Co-Counsel for Defendants  
ZUCKERMAN CO., INC

Brian M. Madden, Esquire  
Napier, Napier & Sikes, P.C.  
35 N. Royal Avenue  
P.O. Box 395  
Front Royal, VA 22631  
(703) 635-2123  
(703) 635-5525 (FAX)  
Attorney for Defendant  
ZUCKERMAN STEEL COMPANY  
INC

ABE N. SOLOMON, INC  
701 South Main Street  
Wilkes-Barre, PA 18702

AMERICAN SCRAP & WASTE  
REMOVAL CO  
P.O. Box 827  
Wilmington, DE 19899

ARCHBALD WRECKING CO  
P.O. Box 871  
90 South Main Street  
Archbald, PA 18403

ATLANTIC BATTERY CORPORATION  
548 E. 42nd Street  
Paterson, NJ 07513

CASH AUTOMOTIVE PARTS  
1 Holly Place  
Hastings-on-Hudson, NY 10706

CROPSEY SCRAP IRON AND METAL  
2994-3018 Cropsey Avenue  
Brooklyn, NY 11214

EISNER BROTHERS  
67 Parker Avenue  
Poughkeepsie, NY 12601

GENERAL METALS & SMELTING CO  
47 Topeka Street  
Boston, MA 02118

GEORGE MOSS  
108 Wright Street  
Duryea, PA 18642

JEM METAL INC.  
c/o Irvin English  
900 Bond Ct. Bldg.  
Cleveland, OH 44114

LEVINE'S IRON & METAL, INC  
P.O. Box 329  
Waynesburg, PA 15370

LEWIS RAPHAELSON & SON, INC  
3rd and Commerce Streets  
Wilmington, DE 19801

LOUIS FIEGLEMAN & CO  
c/o Louis Fiegleman  
Morgas Highway  
Scranton, PA 18508



**WILDER & SON, INCORPORATED**  
569 N. Colony Street  
Menden, CT 06450-2237

**MOLTS AUTO PARTS**  
1500 Lincoln Heights Avenue  
Ephrata, PA 17522

**NORFOLK RECYCLING CORPORATION**  
1148 E. Princess Anne Road  
Norfolk, VA 23504

**NORTHEAST INDUSTRIAL BATTERIES, INC.**  
Eugene & David Drive  
Bristol, PA 19007

**PERLMAN & SONS**  
54 S. Meriam Street  
Pittsfield, MA 01201

**PHILIP LEWIS & SONS**  
82-90 Kemble Street  
Roxbury, MA 02119

**S. KLEIN METALS CO., INC.**  
2156 Camplain Road  
Somerville, NJ 08876

**ST. MARY'S AUTO WRECKERS**  
Rt. 255, Million Dollar Highway  
St. Mary's, PA 15857

**STAGER WRECKING CO.**  
P.O. Box 296  
Portage, PA 15946

**WEINER BROKERAGE CORPORATION**  
216 North Second Street  
Pottsville, PA 17901

**ACADEMY IRON & METAL CO.**  
Moved - No Fwding Address

**ALBERT NIVERT & CO.**  
Attempted Not Known

**ALL STATE METAL COMPANY**  
Attempted Not Known

**BUFFERED JUNK CO.**  
Moved - No Fwding Address

**CHARLES MEYERS & SON**  
Attempted Not Known

**COOPER METALLURGICAL CORP.**  
Attempted Not Known

**FAIRFIELD SCRAP CO.**  
Box Closed - No Order

**F. SCHANERMAN**  
Fwding Order Expired

**FREDERICK JUNK CO.**  
Addressee Unknown

**FULTON IRON & STEEL CO.**  
Box Closed - No Order

**H&B METAL CO., INC.**  
Unclaimed at this Address

**HARRY'S SCRAPYARD**  
Addressee Unknown - Out of Business

**KRAMER AND SONS, INC.**  
Fwding Order Expired

**KASMAR METALS, INC.**  
Fwding Order Expired

**LANCASTER BATTERY CO., INC.**  
Address Unknown - No Fwding Order

**LEVENE'S SON, INC.**  
Attempted Not Known

**M&P SCRAP IRON & METAL CORP.**  
Unclaimed

**M. ROSENBERG & SON, INC.**  
Addressee Deceased  
No Fwding Order

**PAVONIA SCRAP IRON & METAL COMPANY, INC.**  
Addressee Unknown

**PEDDLERS JUNK CO.**  
Addressee Unknown

**ROSEN BROTHERS**  
Fwding Order Expired

**S. ROME & CO., INC.**  
Unclaimed

**S. E. L. METAL CORPORATION**  
Fwding Order Expired

**SAMUEL GORDON AND SONS, INC.**  
Addressee Unknown - No Fwding Address

**SEABOARD SALVAGE**  
No Entity at this Address

**SITKIN METAL TRADING, INC.**  
**SITKIN SMELTING & REFINING, INC.**  
Undeliverable - Addressee Deceased

**TWIN CITIES WASTE & METAL**  
Disappeared  
Moved - No Fwding Address

**WILLIAM R. SULLENBERGER CO.**  
Addressee Unknown

**WM. PORT'S SONS, INC.**  
Moved - No Fwding Address

**BANTIVOGGIO METAL COMPANY**  
a/k/a BANTIVOGGIO METALS and  
f/k/a N. BANTIVOGGIO'S SONS, INC.  
1500 South 6th Street  
Camden, NJ 08101

**BATAVIA WASTE MATERIAL CO., INC.**  
301 Bank Street  
Batavia, NY 14020

**BATTERY MARKETING CORPORATION (BMC)**  
P.O. Box 494  
Troy, AL 36001

**BRIDGEPORT AUTO PARTS INC.**  
f/d/b/a GREAT LAKES BATTERY  
890 National Road  
Bridgeport, OH 43912

**BLUFF & BLUFF, INC.**  
333 Edison Avenue  
Schenectady, NY 12305

**CAL'S AUTO SERVICE, INC.**  
543 Milltown Road  
North Brunswick, NJ 08902-3347

**CHEMUNG SUPPLY CORP.**  
d/b/a OTSEGO IRON & METAL  
Route 14  
Elmira Heights, NY 14903

**CHEVRON CORPORATION**  
f/a GULF TIRE AND SUPPLY CO.  
225 Bush Street  
P.O. Box 7137  
San Francisco, CA 94114-0237

**CHIDNESE SCRAP METAL**  
1825 West Lake Avenue  
Neptune, NJ 07753

**CORNING MATERIALS, INC.**  
Main Street & Gibson  
P.O. Box 43  
Corning, NY 14830

**EXIDE CORP.**  
f/a BAY STATE BATTERY and  
MID-ATLANTIC DISTRIBUTORS  
645 Penn Street  
Reading, PA 19601-3543

**GOODYEAR TIRE & RUBBER CO. INC.**  
f/a AMERON AUTO CENTERS  
1144 East Market Street  
Akron, OH 44316-0002

**HODES INDUSTRIES, INC.**  
P.O. Box 1  
Pleasant Gap, PA 16823

**J. SAX AND CO.**  
140 Granite Avenue  
Boston, MA 02124

**JOHN BRUNESE & SON**  
Rt. 22  
Millerton, NY 12546

**KOVALCHICK SALVAGE CO.**  
Logan Boulevard  
Burnham, PA 17009

**MAX BROCK CO., INC.**  
18 Metcalfe Street  
Buffalo, NY 14206

**MICHIGAN LEAD BATTERY CO.**  
111 Victor Street  
Highland Park, MI 48203

**MORRIS J. RADOV**  
f/d/b/a MEADVILLE WASTE COMP.  
NY  
237 Jefferson Street  
Meadville, PA 16335

**N. BANTIVOGGIO'S SONS, INC.**  
a/k/a BANTIVOGGIO INVESTMENT CO.  
25 Chestnut Street  
Haddonfield, NJ 08033



2515-92-27339c

**NEW CASTLE JUNK**

Sanipson Street Ext.  
P.O. Box 1408  
New Castle, PA 16103

**QUALITY STORES INC**

166 QUALITY FARM & FLEET  
1460 Whitenail Road  
Muskegon, MI 49445-1347

**SAM KASSAB**

436 South Hancock Street  
Wilkes-Barre, PA 18702

**SCHIAVONE CORP**

1032 Chapel Street  
New Haven, CT 06510

**SHELL OIL CO. INC.**

One Shell Plaza  
Houston, TX 77001

**TED SCHWEEN**

329 George Street  
Throop, PA 18512

**TEPLITZ'S MIDDLETOWN SCRAP**

11/1a MIDDLETOWN SCRAP IRON.  
INC.  
75 Church Street  
Middletown, NY 10940

**TEXTRON, INC.**

The Corporation Trust Co.  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

**UNIVERSAL COOPERATIVES INC.**

7801 Metro Parkway  
Minneapolis, MN 55425-1518

**VIRGINIA IRON & METAL**

COMPANY OF PORTSMOUTH, INC.  
Charles M. Lollar, Esquire  
Registered Agent  
700 Newtown Road  
Norfolk, VA 23502

**WESTERN AUTO SUPPLY CO.**

2107 Grand Avenue  
Kansas City, MO 64108

**WILSON BATTERY & OIL COMPANY**

RR 1  
Beach Lake, PA 18405-0027

**WM. KUGLER & BRO., INC.**

5220 Lockport-Junction Road  
Lockport, NY 14094

**WORCESTER METAL & BATTERY**

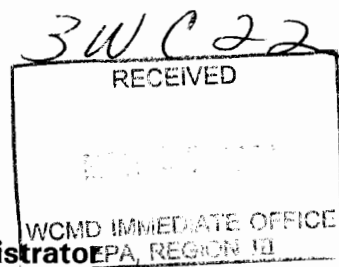
c/o Frank A. Iovella  
6 Iona Avenue  
Shrewsbury, MA 01545

**YATES BATTERY CO.**

Rear 347 N. Main Avenue  
Dickson City, PA 18519



Gould Response



**Controlled Correspondence For  
Office of the Regional Administrator/Deputy Regional Administrator**

**CONTROL NO :** RADA-0100255

**ORIG. DUE DATE:**

**STATUS:** CONTROLLED

**CORRES. DATE:** 03/02/2001

**RECEIVED DATE:** 03/06/2001

**ASSIGNED DATE:** 03/06/2001

**CLOSED DATE:**

**FROM:** COLLINGS ROBERT L.

**ORG:** SCHNADER; HARRISON; SEGAL; & LEWIS; LLP

**SALUTATION:**

**CONSTITUENT:**

**TO:** VOLTAGGIO/THOMAS C.

**TO ORG:** ACTING REGIONAL ADMINISTRATOR

**SUBJECT:** YOUR MEMO DATED FEBRUARY 21, 2001

**ASSIGNED:** WASTE AND CHEMICALS MANAGMENT DIVISION

**COPIES OF INCOMING PROVIDED TO:** CINDY YU (OCGR), DEPUTY REGIONAL  
ADMINISTRATOR, REGIONAL ADMINISTRATOR

**SIGNATURE:**

**RADA COMMENTS:**

**RADA INSTRUCTIONS:**

FOR YOUR INFORMATION

	Assigned	Date Assigned	Code/Status	Date Completed by Assignee	Date Returned to RADA :
Lead	WCMD	03/06/2001	FYI	-	-







ATTORNEYS AT LAW

SUITE 3600 ■ 1600 MARKET STREET ■ PHILADELPHIA, PENNSYLVANIA 19103-7286

215-751-2000 ■ FAX: 215-751-2205

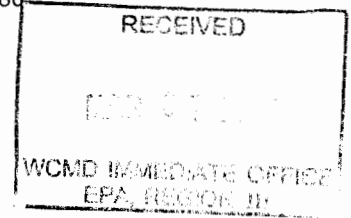
<http://www.schnader.com>

Robert L. Collings

Direct Dial: 215-751-2074

Internet Address: [RCollings@schnader.com](mailto:RCollings@schnader.com)

March 2, 2001



**RECEIVED**

MAR 06 2001

EPA, REGION III  
OFFICE OF REGIONAL ADMINISTRATOR

**Via Telecopy, E-Mail and UPS Overnight Delivery**

Mr. Robert J. Martin  
The National Ombudsman  
U.S. Environmental Protection Agency (Mail Code 5101)  
Ariel Rios Building  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

Re: **Your Memo Dated February 21, 2001**

Dear Mr. Martin:

Gould Electronics Inc. (Gould) is responding to your interrogatories and producing the documents you requested, subject only to court-ordered confidentiality requirements. We are also mindful of your guidelines and assurances that the ombudsman will not get involved in pending litigation matters. We would like to discuss how this will be accomplished.

Gould replies to your questions and requests as follows:

1. Please provide a list of all Potentially Responsible Parties (PRPs) that you believe are legally liable for paying for the cleanup of the Marjol Battery Site.

The answer to this question depends on the definition of the Marjol Battery Site. If the Marjol Battery Site includes only the areas of battery case and other waste disposal, at this time it appears that the only remaining Potentially Responsible Parties (defined under Superfund § 107) are Gould, the Borough of Throop and the remaining few parties in the Gould contribution actions. If the site includes offsite areas where hazardous substances came to be located, and if past cleanup costs are included, all property owners and lessees are PRPs. We do not have a list of such persons.

There was a large group of businesses and persons who supplied batteries or scrap to Marjol. All of the identifiable persons and entities were sued as "arranger" PRPs. Their names are listed in the attached Complaints (Tab 1). The final order entering judgment in the *Gould v. A&M Battery* action resolved all of the liability of those PRPs that supplied scrap batteries directly to Marjol, except for four PRPs that appealed (Tab 2). Gould was assigned the entire liability for any unknown or insolvent arranger PRPs (Tab 3).



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Since then, the adoption of the Superfund Recycling Equity Act, Pub. L. 106-113, 113 Stat. 1536 (Nov. 29, 1999) and the Third Circuit review of that Act in reversing the judgment entered against the four PRPs that appealed suggests that future claims against such PRPs for cleanup costs at the Site are greatly compromised. A copy of that decision is attached (Tab 4).

2. How much money has Gould expended for cleanup of the Marjol Battery Site to this date?

For offsite sampling and removal actions, onsite investigations and initial cleanup measures, site maintenance, and legal costs related to negotiations, remedy selection, regulatory compliance, and a claim for response costs by the Borough, Gould has expended approximately \$32,692,937.36 to date. Both onsite and offsite actions are included. The aggregate of the personal injury and property damage claims, including legal fees and expenses, is \$15,824,986.79. Total expenditures in response to the site contamination are thus \$48,517,924.

3. How much money has Gould Inc. been paid by other PRPs for cleanup of the Marjol Battery Site to date?

Gould has expended \$3,835,751 in legal fees and expenses, and has received \$6,189,934.73 in recoveries. Therefore, Gould's net payments from other PRPs has been \$2,354,183.73.

4. Does Gould have insurance to pay for legal costs related to the cleanup of the Marjol Battery Site? Please list the insurance companies and law companies that Gould believes are liable for paying the legal costs related to the cleanup of the Marjol Battery Site?

Gould believes it has identified all carriers and submitted claims for past and future costs, including legal defense costs. To the best of our knowledge, Gould has no insurance to pay for legal costs related to cleanup of the Marjol Battery Site. We are providing the list of carriers we sued (Tab 9,10). Those suits have been resolved. No carrier voluntarily paid any claims without suit, so the list reflects available insurance to the best of our knowledge. To repeat, going forward there is no coverage for legal defense costs.

Gould does not have remaining insurance that is obligated to provide it a defense. It also does not have viable remaining insurance responsive to a claim for legal costs at Marjol. For further answer, see response to Interrogatory No. 5, below.



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5. Does Gould have insurance for paying for the cleanup of the Marjol Battery Site? Please list the insurance company and/or companies that Gould believes are liable for paying the cleanup costs related to the Marjol Battery Site.

Gould does not have remaining viable insurance responsive to a claim for cleanup costs at Marjol. The insurance carriers against which Gould might have claims for reimbursement are insolvent or have been previously dismissed by the court from Gould's environmental insurance lawsuit. Gould has previously aggressively pursued its claims against these carriers with no success.

Gould sued a group of carriers for costs and expenses specifically associated with the Marjol Battery Site. That suit, *Gould Inc. v. Arkwright Mutual Insurance Co., et al.* (Tab 9) was resolved with a settlement of \$8,901,707. Deducting the legal fees and expenses incurred in obtaining that recovery, which were \$2,771,447, Gould's net recovery from all defendant carriers was \$6,130,260.

Gould also filed a global claim for costs of cleanup at many sites. That complaint, *Gould Electronics Inc. v. Aetna, et al.* (Tab 9, 10), was resolved in a confidential settlement which did not allocate any amount specifically to the Marjol Site. The settlements are confidential.

6. Does Gould Inc. have insurance to pay for toxic tort litigation and damages related to the Marjol Battery Site? Please list the insurance company and/or companies that Gould believes are liable for paying toxic tort litigation costs and damages related to the Marjol Battery Site.

See response to Interrogatory No. 5, above.

7. Please provide a copy of all lawsuits, Consent Decrees, Consent Agreements in your possession related to the Marjol Battery Site.

Gould is providing a complete response. This includes:

**Lawsuits by Gould Against Arranger PRPs**

*Gould Inc. v. A&M Battery & Tire Service, et al.*

Tab 1

There are three other cases directly related to *Gould v. A&M Battery*. In this response, they are included within the reference to *A&M Battery*. Copies of the Complaints or Third-Party Complaints in these actions are enclosed. The case names are as follows: *Hudson Scrap Metal, Inc., et al. v. Ray Atkinson, et al.*; *A.*



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*Shapiro & Sons, Inc. v. Rutland Waste & Metal; and Gould v. Bergen Metals, et al.*

There was no consent decree in this case. A final judgment issued and appeals have been decided, with the exception of a few SREA claimants. A copy of the court decision is attached. Tab 2

A copy of the court decision on orphan share liability is attached. Tab 3

Gould is also submitting the 3<sup>rd</sup> Circuit decision on SREA's effect on such claims by Gould. Tab 4

#### **Government Consent Orders**

- |    |                                     |       |
|----|-------------------------------------|-------|
| 1) | EPA's 1988 CERCLA Consent Order     | Tab 5 |
| 2) | EPA's Amended CERCLA Consent Order  | Tab 6 |
| 3) | EPA/DEP Consent Agreement and Order | Tab 7 |
| 4) | Amendment to 1990 Consent Agreement | Tab 8 |

#### **Lawsuits by Gould Against Insurers**

*Gould Inc. v. Arkwright Mutual Insurance Co., et al.*  
(initial and amended complaints) Tab 9

*Gould Electronics Inc. v. Aetna, et al.* Tab 10

#### **Lawsuits by the Borough of Throop against Gould**

*Throop v. Gould* (Lackawanna Co. C.P.) - removed to federal court.

Complaint (1995) Tab 11

Release and Agreement (1996) Tab 12

New Complaint (2000) Tab 13

This case is pending.

#### **Damage/Injury Lawsuits by Throop Resident And A Contractor At The Site.**

*Ambrogi, et al. v. Gould*, and many other cases. All are compiled at this tab. Tab 14





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Gould believes its responses are complete. However, some of your questions, especially as to insurance coverage and PRPs, have to be answered carefully. Gould has comprehensively identified its claims and lawsuits and the results. Gould does not want to appear to waive or abandon any claims we may not have identified or filed, but we acknowledge there is no one else identified at this time other than those we are providing.

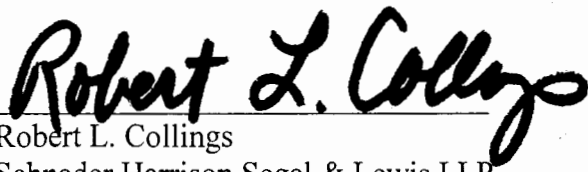
Based on your requests and our responses, Gould assumes you will not make any inferences against Gould without further contact and discussion, and we specifically reserve all legal rights to challenge any adverse decisions.

Finally, we have served responses to the interrogatories on other parties as you requested. The document production is extensive, and we note thankfully that you are not asking us to provide copies of all document requests to the other parties. We would suggest that you serve as a repository for all answers, and provide copies of all information you receive to parties upon request, or make them available for inspection and copying.

As noted in my January 3, 2001 letter and prior voicemails, I would like to speak with you at your earliest convenience, so that we can engage in discussion of the issues you have identified for investigation, and avoid entanglement in an ongoing litigation with the Borough of Throop. I look forward to contact from you now that the project is resuming.

Very truly yours,  
Gould Electronics Inc.

By:



Robert L. Collings  
Schnader Harrison Segal & Lewis LLP  
Counsel for Gould Electronics Inc.

Enclosures: Production of Documents

cc: (without document production)

Service List (via telecopy and first class mail)  
Spencer Hanes (via E-mail)

